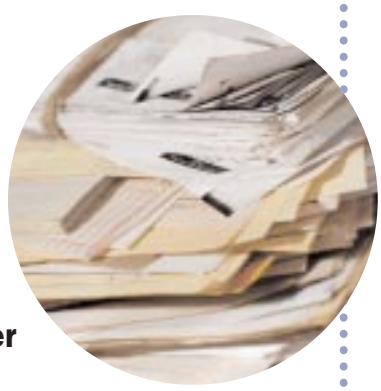
Law Society Gazette

Regulars

COVER PHOTO: roslyn@indigo.ie

Cover Story



Editor: Conal O'Boyle MA. **Assistant Editor:** Maria Behan. **Designer:** Nuala Redmond. **Editorial Secretaries:** Catherine Kearney, Louise Rose. **Advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9, tel/fax: 837 5018, mobile: 086 8117116, e-mail: seanos@iol.ie. **Printing:** Turners Printing Company Ltd, Longford. **Editorial Board:** Dr Eamonn Hall (Chairman), Conal O'Boyle (Secretary), Mary Keane, Pat Igoe, Ken Murphy, Michael V O'Mahony, Vincent Power

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4801.
E-mail: c.oboyle@lawsociety.ie Law Society website: www.lawsociety.ie

Volume 94, number 6
Subscriptions: £45

Monkey trouble

There's an old saying that 'if you pay peanuts, you get monkeys'. Well, not anymore. These days, if you pay peanuts, you get nobody at all. Monkeys would be a bonus.

You only have to look at the current staff shortages in the public sector to see the truth of this. In this magazine over the last few months, you will have read of the Law Society's on-going concerns about the levels of staffing in the Land Registry and the consequent backlog of dealings. Currently, arrears stand at about 100,000, and the Department of Justice has admitted that the situation is likely to get worse before it gets better. Recruitment of 60 new staff at the registry has been approved, but it is questionable whether the department will be able to attract or retain sufficient candidates to fill these posts.

The tiger's soft underbelly

And the problem does not only lie with the Land Registry: it's the same story right across the public sector. Some might say that this is an economic issue, the soft underbelly of our roaring tiger. But solicitors – like other professionals working in these areas – know it's not as simple as that. This isn't about economics; it's about people. Real people are being affected by notional funding decisions taken by government. We've all seen how our clients have been affected.

Take the Wards of Court Office, for example. Staff shortages there are hitting some of the most vulnerable members of society. People who can't look after themselves. The least they could expect is that an office set up by the state to look after their welfare should be sufficiently well funded so that it can do its job. I understand the office is facing a two-year backlog in bringing its files up to speed. This is no reflection on the hard-pressed staff in the Wards of Court Office, who are doing Trojan work in the most trying circumstances. This is a reflection on government priorities.

The Probate Office is in similar trouble. Again, its inability to function at anything resembling efficiency because of chronic staff shortages is hitting people who have suffered enough distress already without enduring a further and unnecessary blow upon a bruise.

And then there's the legal aid system. Elsewhere in these pages you'll find a news story on a new report on civil legal aid prepared by the society's Family Law and Civil Legal Aid Committee. It forcibly makes the point that there may be hundreds of couples forced to live in tragic domestic circumstances for a year or more because of the huge backlog of legal aid cases. As the committee chair, Rosemary Horgan, says: 'It's important to realise that there are real human consequences to an inadequately-funded and under-staffed legal aid service'. That sentiment could equally apply to all other parts of the public service.

Another man's wound

We're living in extraordinary times. Exchequer coffers are bursting and the government admits it has more money than it knows what to do with. Well, we have some ideas about that. For a start, it could pump some of that revenue into the cash-starved state bodies that really need it. It could recruit sufficient staff so that these bodies can carry out the valuable work they are charged with doing. And it could raise the level of remuneration right across the public sector so that it attracts and retains the brightest and best.

There's another old saying: 'it's easy to sleep on another man's wound'. Many people are suffering needlessly while we congratulate ourselves on how well we are all doing. This country, and the government's economic gurus, need a wake-up call.

Anthony Ensor,
President

'Many people are suffering needlessly while we congratulate ourselves on how well we are all doing'

LIBRARY BOOK SALE
The Law Society Library will have some old book stock available for sale in the library in the week starting Monday 17 July. Proceeds of the sale will go to the Solicitors' Benevolent Association.

LAW SOCIETY RETIREMENT TRUST SCHEME
Unit prices: 1 June 2000
- **Managed fund: 354.968p**
- **All-equity fund: 110.772p**
- **Cash fund: 178.740p**
- **Pension protector fund: -**

INTERNATIONAL CORRUPTION SYMPOSIUM
An international symposium on the OECD convention on combating bribery of foreign public officials will be held in Bruges, Belgium, on 14-15 September. The conference, organised by the American Bar Association, the International Bar Association and the CCBE will bring together experts on the OECD convention and other anti-corruption initiatives. It will include discussions on money laundering and bank secrecy laws. For further information, contact the ABA's International Law Section on 001 202 662 1727 (web: *www.abanet.org/intlaw*).

CHIEF JUSTICE BOOKED FOR COMPANY LAW CONFERENCE
Chief Justice Ronan Keane will be the keynote speaker at the *Company law 2000* conference on 22-23 September in University College, Cork. The conference will discuss the future direction of Irish company law and enforcement in the context of the UK Company Law Review Project and the European Harmonisation Project. A complete programme of speakers and a registration form will be available at the end of August. For further information, contact Dr Irene Lynch-Fannon, Department of Law, UCC, on tel: 021 490 2224, fax: 021 427 0690.

Flood v Miley: Law Society joins as notice party

The Law Society has accepted the invitation from the president of the High Court, Mr Justice Frederick Morris, to be joined as a notice party to the judicial review which has been initiated by solicitor Stephen Miley of certain orders made against him by the Flood Tribunal, *writes Ken Murphy*.

The Tribunal of Inquiry Into Certain Planning Matters and Payments has made a number of orders against Stephen Miley requiring certain documentation and information in relation to his clients, Jackson Way Properties Limited, to be revealed to the tribunal. Mr Miley has opposed these orders on a number of grounds, including an argument that the documentation and information should not be disclosed to the tribunal on the grounds of solicitor/client privilege and confidentiality.

At its meeting on 23 June, the Law Society Council decided that the society should seek to be joined as a notice party in this High Court judicial review. The society's objective is to defend solicitor/client privilege and solicitor/client confidentiality from any future erosion and it views this as a matter of the highest public interest. The society has been vigorously defending these principles from attack on a number of fronts in recent years and it has decided to take this opportunity to do so again.


Law Society: acting as 'a friend of the court'

The society's involvement in this case is solely to uphold and preserve the principles underlying legal professional privilege and solicitor/client confidentiality. The council made it clear that by becoming a notice party and making submissions and arguments, the society is in no way supporting any party on the merits of this particular case. The society does not support or wish to be identified with either side in this dispute but is making its contributions on an *amicus curiae* basis.

Video-link seminar a success

Mary Hanafin, Minister of State at the Department of Health and Children *(pictured right)*, was one of the speakers at the Law Society's first-ever CLE video-link broadcast. The CLE seminar, *Children and the law*, chaired by Mrs Justice Catherine McGuinness, was held in Cork and linked to Dublin through video-conferencing facilities. Although a third link to Waterford proved problematic and had to be disconnected, the video link was generally regarded by those involved as a resounding success. Further video-link CLE seminars are planned for the future.

Library to close for three weeks – but bigger and better on the way

The Law Society library will be closed for a three-week period from Monday 14 August to Friday 1 September inclusive to allow for its move to a new location in Blackhall Place. It will reopen for business on Monday 4 September but during the preceeding period it will be closed to personal callers, as well as to phone, fax and e-mail communications.

The new library will be located on two floors in what was formerly the student lecture hall. The new location, at the front of the building, will be more accessible to everyone and will provide some much-needed extra space. The new layout will include a mixture of computer workstations and study tables. On-line databases (including the Internet) and CD-ROMs will be available on all workstations. A larger multiple-copy collection of core textbooks will be stocked for student use.

The library will be combining the existing library and information service to members with a much busier student library to cater for the new Education Centre, which is due to open on 2 October.

Radical reform of legal aid system urged in new Law Society report

Free legal aid should be immediately extended to anybody who receives social welfare assistance, according to a new report from the Law Society's Family Law and Civil Legal Aid Committee, which recommends a complete overhaul of the legal aid system. The *Report on civil legal aid in Ireland* was launched at a press conference in the Law Society's headquarters last month.

At the moment, eligibility for legal aid is restricted to those with 'disposable income' of less than £7,350. The report says that the financial criteria have been stuck at this level since mid-1995 and so 'places an unfair restriction on the eligibility of potential customers'.

It also says that the legal aid service provided to refugees and asylum-seekers is totally inadequate, with applicants to the Refugee Legal Service (RLS) being processed by law clerks rather than solicitors. The report says that the RLS should be 'properly staffed with fully-qualified solicitors from the outset of their application' and that 'solicitors dealing with asylum-seekers should be able to advise on deportation orders'.

Rosemary Horgan launching the society's new report on civil legal aid

According to Rosemary Horgan, chair of the Family Law and Civil Legal Aid Committee: 'There is no doubt that the restrictive nature of the current legal aid scheme puts us in breach of the *European convention on human rights and fundamental freedoms*. If we truly believe in the concept of "justice for all", then the scheme needs to be radically reformed and extended as a matter of urgency.

'In the context of family law, for example, there may be hundreds of couples forced to live in tragic domestic circumstances for a year or more because of the huge backlog of legal aid cases. Doubtless, many can't endure the wait before their cases get heard and some must throw in the towel – and throw back the keys to the family home as well. It's important to realise that there are real human consequences to an inadequately-funded and under-staffed legal aid service'.

The committee believes that the government could save taxpayers' money and ease the huge backlog of pending cases by contracting out legal aid services to a nationwide panel of private practitioners, she added.

The report goes on to make a number of further proposals for reforming the legal aid system. These include:

- Legal aid should be expanded to include all tribunal work and test cases (subject to the merits of the particular case)
- If a Law Centre can't handle an application for legal services within one month, the Legal Aid Board should contract out that application
- There should be a duty solicitor in each Law Centre to provide immediate legal advice to clients, as there is in England
- Legal aid clients should be able to choose their solicitor from a Law Centre or from a panel of private practitioners
- Where litigation proceedings are pending and a party seeks legal aid, that application should be dealt with speedily to avoid delays to other litigants and court users
- The Legal Aid Board should immediately introduce an objective system of quality assurance and a formal complaints-handling procedure
- Appeals against any decision of the Adoption Board regarding disclosure of information should be legally aided
- All parties to adoption disputes should be eligible for legal aid.

The Law Society's Family Law and Civil Legal Aid Committee has submitted its *Report on civil legal aid in Ireland* to the Department of Justice, Equality and Law Reform.

LawSociety Gazette

summer publication

As usual, the *Gazette* will be taking a well-earned break over the summer so there will be no issue in August. Normal publication will resume with a joint August/September issue, due out on 8 September.

A little of what you fancy

Conscious of the time constraints that a booming economy places on practitioners and the necessity of keeping up-to-date with changes in legislation and practice, the Law Society's Continuing Legal Education team has come up with a solution – a series of seminars taking place over one day!

A panel of experienced speakers will deliver hour-long lectures, which will run concurrently, on a wide range of topics, including conveyancing, commercial law, e-commerce, taxation, employment law, litigation and EU law – *you* decide the agenda.

The seminars will be held in the society's new Education Centre in Blackhall Place on Saturday 11 November and will cost £85. Further details will be circulated with the August/September issue of the *Gazette*.

COURTS SERVICE
An tSeirbhís Chúirteanna

Executive Legal Officer to the Chief Justice

The Courts Service seeks to engage a suitably qualified person with appropriate experience and skills to provide legal and administrative support to the Chief Justice. This is an outstanding opportunity for an ambitious and enthusiastic legal graduate. The arrangement will be on a contract basis for a twelve month period renewable to a maximum of three years.

Applicants should:

- have a qualification in law
- have excellent communication, interpersonal and computer skills
- have excellent Organisational skills
- have excellent administrative skills and
- have the capability to produce high quality written material

Letters of application with full details of relevant experience should be sent to arrive not later than **5.00pm on Friday 21 July 2000 to Mr Brendan Ryan, Director of Corporate Services, Green Street Courthouse, Halston Street, Dublin 7.**

Shortlisting of applications may be carried out on the basis of these written applications.

A more detailed description of the range of duties required is available on written request to the above address of fax 01-873 5242, or alternatively telephone 01-888 6426,

Attractive remuneration arrangements shall apply to the successful applicant.

The Courts Service is an equal opportunity employer.

Army deafness litigation update

There have been a series of discussions between solicitors representing plaintiffs in army hearing cases, and representatives of the Chief State Solicitor's Office and the Department of Defence over the last number of months. The Law Society, through James McCourt, Ken Murphy and Mary Keane, acted as facilitators. In this regard, cases had been adjourned for Easter term, and a number of settlement meetings have already taken place with plaintiffs' solicitors.

Judge Johnson was made aware of the discussions which had taken place between the parties in the High Court, and on Wednesday 14 June an application was made by the defendants for a further adjournment of cases to see if settlement negotiations could continue between the parties. Judge Johnson ordered that, as far as the Dublin High Court list was concerned, the List 2 (army hearing cases) would start again on 11 July next for the rest of the term. The first two weeks of Michaelmas term was to be adjourned, and the entire matter is to be reviewed by him on 2 October next.

The High Court on circuit will be dealing with hearing

cases in July in Waterford, Limerick and Cork, and cases scheduled for these sittings are unaffected. Dublin Circuit Court is adjourned as regards hearing cases until 11 July, and an application in respect of the first two weeks of the Michaelmas term is to be made shortly before the president of the Circuit Court. Country circuit venues are unaffected.

The Office of the Chief State Solicitor has indicated that it will recommence the process of trying to settle cases by negotiation from the end of Hilary term. In this regard, practitioners who act for plaintiffs are requested to forward any audiograms to the chief state solicitor, who, prior to opening any settlement negotiations, will have exchanged audiograms with the relevant solicitor. The Chief State Solicitor's Office has promised to deal with the cases subject to the usual constraints of the resources which they have available.

Practitioners might note that any successful negotiations culminating in an offer being made by the defendants should comprise a figure for the plaintiff and a separate all-in figure in respect of contribution towards the plaintiff's costs.

If any practitioners require further information, they can contact representatives of the group which has been in discussion with the defendants in these cases: David O'Shea, Patrick V Boland & Son, Solicitors, Newbridge; Brian Carolan, Byrne Carolan Cunningham, Solicitors, Athlone; Terry English, Flynn English & Co, Solicitors, Cork; Seamus Downes, McMahon & O'Brien Downes, Solicitors, Limerick; and Pat Crowley, O'Donovan Solicitors, 73 Capel Street, Dublin 1.

Date for your diary

Next year's Law Society of Ireland annual conference will be held in Monaco from 26-29 April 2001.

New Education Centre 'on a par with the best in the world'

The imminent completion of the Law Society's new £5.2 million Education Centre has been hailed as 'probably the most exciting time ever in the history of Irish legal education' by Director General Ken Murphy.

'Not merely will the facilities for education soon be incomparably better than what has existed up to now', he said, 'but the educational course content and methodology have

also been brought into line with the society's vision that it should provide both pre- and post-qualification training for solicitors that is at least on a par with the best to be found anywhere in the world'.

President Mary McAleese will officially open the building on 2 October, and two days later the Education Centre will welcome 360 new professional practice course students.

RECENT STAMP DUTY CHANGES

The *Finance (No 2) Act, 2000* was passed by the Oireachtas on 29 June. Details of the provisions of the act are available on the Department of Finance website at *www.irlgov.ie/finance* or the Revenue Commissioners' website at *www.revenue.ie.*

JUDICIAL CASE MANAGEMENT DISCUSSION DOCUMENT

The Law Society's Litigation Committee has watched with interest the introduction of various forms of judicial case management in other jurisdictions. At the committee's request, a number of specialist litigation solicitors formed a sub-committee to examine the concept and its possible application to civil procedure in this jurisdiction. The sub-committee presented its discussion document to the Litigation Committee last month. The committee decided that the document should be forwarded to each bar association for discussion at local level. Members who wish to obtain a copy of the document can contact Colette Carey, secretary to the Litigation Committee. Comments or observations should be submitted by 18 August.

MBNA TRAVEL INSURANCE: A CLARIFICATION

The Law Society has received a number of queries regarding the travel accident insurance offered by MBNA. An MBNA standard cardholder who uses his or her card to pay in full for travel tickets can avail of up to £100,000 travel accident insurance. But members should note that this travel accident insurance applies only during the course of the journey to and from one's destination. It does not cover travel cancellations or accidents or injuries incurred while not in transit. Different conditions may apply to gold cardholders and members should check the terms and conditions of use of their card carefully.

COURTS SERVICE
An tSeirbhís Chúirteanna

Family Law Reporting Service

The Courts Service plans to establish a pilot project for a period of one year to report on family law cases including court decisions, written judgments and statistics of cases coming before the courts.

The Courts Service seeks to engage on a contract for service basis a suitably qualified person with appropriate experience and skills to manage this project which is to provide a Family Law Reporting Service. This is an outstanding oppportunity for an ambitious and self-motivated legal graduate. The arrangement will be for a period of one year.

Applicants should have:

- a qualification in law
- execellent communication, interpersonal and computer skills
- excellent organisational skills
- excellent administrative skills and
- the capability of producing high quality written reports
- a knowledge and understanding of Irish Family law practice

Letters of application with full details of relevant experience should be sent to **Ms Maire Ryan, Courts Service, Green Street Courthouse, Halston Street, Dublin 7 by 14 August 2000.**

Shortlisting of applicants may be carried out on the basis of the applications received.

A more detailed description of the range of duties required is available on written request to the above address.

Attractive contractual arrangements will be available to the succesful applicant.

Information submitted may be subject to disclosure under the Freedom of Information Act.

DSBA initiative to tackle legal secretary shortage

The first steps towards solving the shortage of skilled legal secretaries were taken by the Dublin Solicitors' Bar Association last month with the launch of a tailor-made legal secretarial course. The traineeship scheme has been designed in association with FÁS, and will run on a trial basis in Dublin. If the pilot project is a success, FÁS may extend it around the country.

Showing initiative: Frank Nugent, Ann Gilton and John Dolan from FÁS, with the DSBA's Richard Bennett and Boyce Shubotham

The new legal secretary traineeship will run for four months, consisting of 18 weeks' off-the-job training at a FÁS centre and ten weeks' in-house training at participating law firms. According to Boyce Shubotham of the DSBA's employment committee, the traineeship is targeted at the unemployed, school leavers and people who want to return to work.

'Experience has shown that once someone becomes a legal secretary, they tend to stay within the legal profession rather than revert to a normal secretarial role', he said. 'This course has been designed so that people will learn a full set of skills, whether they work in a big firm or a small practice'.

FÁS and the DSBA have drawn up a skills profile which potential trainees will have to meet before they are accepted on the course. Participating firms will be matched with suitable candidates, who will have to complete a 12-module training plan before they are awarded a national skills certificate. The modules include: clerical and keyboard skills, dictaphone typing, basic accounts, telephone techniques, legal practice and procedure, and training on the CORT computer system. Law firms will have to appoint an in-house mentor to oversee the training plan and a skills coach who will help the trainee and give feedback on performance.

FÁS will run a half-day course in late August to train mentors and coaches, prior to the introduction of the new legal secretary traineeship in September. 'If you want a strategy for staff retention', said Frank Nugent of FÁS, 'then mentoring is the best approach'.

There are 20 places on the pilot scheme, and law firms interested in participating should contact Boyce Shubotham at William Fry on tel: 01 639 5000.

Society's complaints handling 'extremely satisfactory'

Only two journalists, one of them 40 minutes late, turned up to the recent press conference to launch the second annual report of independent adjudicator Eamon Condon, *writes Ken Murphy*. On the morning in question, every other journalist in Dublin appeared to be congregated outside the home of the former judge and future investment banker Hugh O'Flaherty.

Not a line of coverage of the independent adjudicator's report subsequently appeared. Indeed, last year's report did not fare much better despite the fact that on that occasion up to a dozen journalists attended the press conference, including two TV crews. Condon's job is to assess the fairness and effectiveness of the Law Society's handling of complaints made against solicitors by their clients. His problem, from a news point of view, is that his reports do not resoundingly condemn the Law Society and solicitors everywhere, as the media apparently would like.

On the contrary, Condon assesses the society's complaints handling as 'extremely satisfactory' and 'a fully-resourced state-of-the-art operation well ahead of its counterparts in Northern Ireland, Scotland, England and Wales'. The only thing it lacks, he says, are the additional statutory powers required to make it more effective, although Minister for Justice, Equality and Law Reform John O'Donoghue has promised him that these long-awaited powers will be in place by the end of the year.

NEW GUIDE TO SMALL CLAIMS COURT

A new step-by-step consumer guide to the Small Claims Court procedure has been published by the European Consumer Centre (ECC). The booklet, *The Small Claims Court: a consumer's guide* is designed to complement the ECC's litigation advice service, which is available free of charge to all consumers. Copies are available from the Dublin-based ECC and from Citizens' Information Centres around the country.

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in June 2000: Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £7,222.94.

US LAWYERS TO MEET IN BLACKHALL PLACE

Tánaiste Mary Harney will be the guest speaker at a special meeting of the American Bar Association's International Section which will be held in Ireland on 21-22 July. The Law Society is hosting the business session on the afternoon of Friday 21 July (3.30-5.30pm) where the tánaiste will discuss *Ireland as a gateway to the EU*. Other speakers include Ulster Bank chairman Sir George Quigly and General Motors' Robert C Weinbaum.

A series of mock trials will be held on the morning of Saturday 22 July (9am-12pm), when leading Irish solicitors and barristers will compare how criminal and civil cases are tried here and in the US.

This the first time in 15 years that such a meeting has been held in Ireland and many lawyers from around the United States are expected to attend. A general invitation has been issued to Irish solicitors who would like to attend any of the ABA sessions. For further information, please contact Mary Kinsella at the Law Society on 01 672 4823.

An open letter to the minister for justice

Donncha O'Connell of the Irish Council for Civil Liberties replies to comments made by Justice Minister John O'Donoghue in last month's issue

Dear John, I read your interview in the last issue of *The Gazette* with great interest.

You deserve some praise for your honesty in admitting that you do not take those of us who work for human rights in the NGO sector seriously. We have known that for years, but it is good to see you taking ownership of your indifference towards us in such a public manner. I doubt very much if you would get away with a similar posture towards the gardaí and the prison officers, not to mention the licensed vintners. It's time you got your head around the fact that a group does not have to be a vested interest to become a stakeholder in policy development by your department. In fact, vested interests often have conflicts of interest.

What I find more insulting is your suggestion that we oppose everything which you propose because not to do so would mean that we would lose our 'badges of honour'. This raises a number of issues. It is not correct to say that we oppose everything emanating from your department. For example, we in the NGO sector have been very constructive in relation to your legislation to establish a human rights commission. We have also indicated a willingness to engage constructively on your yet-to-be-published proposals with regard to incorporation of the *European convention on human rights*. In the past, we have worked assiduously to ensure that equality legislation, which came from a section of your department, was passed and we welcomed your announcement of the video-recording of police interviews last summer.

To attempt to give the impression that we are all in some way addicted to opposition is a self-serving factual distortion. To suggest that this is motivated by shallow sentiment about badges of honour is rich coming from someone like yourself who stubbornly wears the sheriff's badge of zero tolerance, albeit with diminishing pride!

Push and pull

Your suggestion that those of us who oppose your policies on asylum and immigration base our views on emotion rather than logic is simply unsustainable. You are the person who has put fear at the centre of public discourse on this issue with wildly hyperbolic and prejudicial statements about 'bogus asylum-seekers' and 'pull factors'. When opportunities have been presented to you to temper the extremism of certain public figures – some of whom are close to you, politically and geographically – you have validated their position with amoral silence. We, on the other hand, have responded to your policy initiatives by consistently referring to international human rights standards, minimal constitutional guarantees and experience (good and bad) in other

jurisdictions. If we have focused on the push factors behind migration, it is simply to counter your spurious obsession with pull factors in this country. This does not earn the same kind of headlines which you have generated in the tabloid press, but it is a most honourable and compelling mode of debate.

You justify much of what you do in this area as no worse than occurs in other countries across Europe. It's funny, but you always seem to fall back on European practice to justify downward and never upward harmonisation. Lots of things happen in other countries that we would never dream of introducing here, and it really is the lamest excuse.

At no stage has my organisation ever accused you of racism and I disagree strongly with your glib assertion that the Irish people are not racist. Your colleague, Liz O'Donnell, has recently stated that we must not remain in denial about our potential for virulent racism and you would do well to take her advice on board. Of course, it would be crude and unfair to describe the entire country as racist but it is equally dishonest to deny the existence of racism on our streets and in our homes. If your credibility had not been so shamelessly squandered, you, as minister for justice, equality and law reform, could take a position of real leadership on this issue. That would go much further towards securing your place in history than the reactionary bluster which has become your rhetorical trademark.

Vainglorious claims

When I got to the part of your interview dealing with criminal justice matters, I really had to marvel at your vainglorious claims. You spoke about the right to silence as if it existed as 'an absolute right' when you came into office. Pull the other one, minister! Your readership are, no doubt, sufficiently well versed in the *Offences Against the State Acts* and the *Criminal Justice Act, 1984* to know that there were already numerous bases for drawing adverse inferences from silence contained in legislation for which you can claim no credit. You may have plans to ram a coach and four through what is left of the right to silence, but the European Court of Human Rights (and indeed other bodies) will have something to say about that. You talk about giving 'an even break to the prosecution' as if prosecutors were some kind of oppressed minority. Would that you

displayed such compassion to really oppressed minorities.

You hail the prison-building binge as a major symbol of your self-proclaimed success, despite the fact that every objective commentator has questioned the wisdom of such a one-dimensional approach to penal policy. For a justice minister to claim prison building as evidence of victory in the war against crime must surely defy logic.

I had to smile at your pride for introducing mounted police. Fair play to you for putting a few guards on horseback. I agree, it does add to the ambience around the capital and they certainly don't make as much noise as squad cars rushing to the nearest take-away. However, your statement that 'no matter how depraved a criminal might be, he won't attack the horses' leaves me somewhat bewildered. Look at what happened to poor Shergar!

'As a certain fact, history will say that I was right'. I know you are dead against kidnapping but, I think, this is called giving hostages to fortune. That is putting it kindly. No doubt, some future historians will corroborate your predictions, but I'm afraid you will have to wait for the revisionists. As I suspect you don't trust revisionist historians, it's as well to get your own version in first!

With every good wish for a very bright future.

Yours in stubborn but principled opposition,
Donncha O'Connell. G

Donncha O'Connell is director of the Irish Council for Civil Liberties.

Can we prevent house-buyers being hammered at auctions?

The proper enforcement of consumer legislation should become the property purchaser's best friend, writes Pat Igoe

The very desirable property in a much sought-after area with all amenities close by had a pre-auction guide price of £350,000. It was withdrawn from sale at £400,000 by the auctioneer, seeking a still higher price. Exit unhappy, frustrated and muttering would-be buyers.

A simple saga, oft repeated. A waste of surveyors' fees for checking the property, of solicitors' fees for checking title and related matters, and of sometimes tortuous arrangements with lending institutions – not to mention the afternoon off work and the time and emotion invested in the property. Irritation at what are seen as misleading guide prices would seem to be high, and growing. Auctioneers are admitting to 'auction fatigue'.

Auctioneers have clear duties to would-be purchasers

Spiralling prices

Dublin auctioneer Simon Ensor of Sherry Fitzgerald acknowledged in a recent issue of the Irish Auctioneers and Valuers Institute journal *Property valuer* that 'there can be little doubt that auction guidelines which prove to be misleading cause a tremendous amount of ill-will between the public and estate-agents'. He went on to forecast that 'conservative guidelines' are likely to remain common practice for the foreseeable future, because the general public has been educated to add a significant premium to guide prices'. We've started, so we must continue?

The question arises as to whether our laws and their enforcement have been too indulgent to auctioneers. Is this one area where the consumer, who gets widespread protection and recourse if sold a defective kettle, can justifiably feel neglected?

The textbooks on auctioneers and estate agents do not even mention guide prices. The legal standing of guide prices might be that of informed guesses given without prejudice. The difficulty arises when would-be purchasers – perhaps not unreasonably – regard guide prices as indicating what vendors are seeking. If the vendors are not satisfied with their own auctioneers' guide prices, what are they looking for and why won't they tell us?

Enter the reserve price which, of course, is not disclosed. It is held *in pectore* by the vendors and their agents. But if vendors wish to bid up to the reserve price, section 58 of the *Sale of Goods Act 1893* requires that the existence of the reserve price must be disclosed – as is done in the Law Society's *General conditions of sale*. Would-be purchasers are on notice that there is a reserve price, whether or not told by their solicitors.

Abusing potential purchasers

But the guide price has no legal, or indeed any, relationship with the reserve price, which is determined on the day of the auction. Since the mid-1990s particularly, frequent significant differences between the guide prices and the secret reserve prices have increasingly been seen as abusive of potential purchasers.

Reserve prices reasonably enough seek to protect vendors from 'rings' of colluding auction bidders refraining from competition with each other. But clear and glaring differences between them and

the often much-lower guide prices have left auctioneers open to cries of 'foul'. Some of the odium may also pass to the solicitor for the vendor who leaves the auction room with the auctioneer to discuss with the vendor whether an offer, already in excess of the guide price, will be accepted.

Auctions through the ages

Auctions are an ancient institution. They come through the mists of time and range across a wide spectrum from our familiar upward price auction to the downward price 'Dutch auctions' where the price is reduced until a buyer offers to buy. They stretch back to classical Greece and Rome, and earlier. The fall of the hammer as the moment of contract is more recent, being preceded in England from the beginning of the 17th century by 'an inch of candle' or an hour-glass as the timespan within which the best bargain could be reached.

So auctions are not new to law. And auctioneers in Ireland clearly do have duties to would-be purchasers, not in contract but in tort and statute. The common law of negligence applies insofar as there is a point when an auctioneer's sale promotion goes beyond 'puff' to factually misleading statements. 'Puff' is merely enthusiastic and buoyant opinion and allows the colourful prose so beloved of our newspaper property writers.

In auctioneers' brochures, it is commonplace that the Dublin suburbs of Foxrock and Blackrock seem to cover a broad tract of south County Dublin. Less prestigious suburb names are de-emphasised or left out. Perhaps the long-standing contract principle of *caveat emptor* casts too long a shadow. Perhaps it is time for the law to be less indulgent.

A significant factual inaccuracy may go beyond the protection afforded by the small-print disclaimers in auctioneers' brochures. In his book *Auctioneering and estate agency law in Ireland*, Alan P Mahon SC notes that these disclaimers will not protect auctioneers from liability for statements wilfuly designed to mislead potential purchasers.

The seminal English Court of Appeals case of *Hedley Byrne & Co Ltd v Heller and Partners Ltd* (1964), where the bank was saved from liability for losses arising from its negligent misrepresentation in a financial reference by the words 'without responsibility', did have a fundamental legal *ratio*: people who hold themselves out as professionals will be liable for negligent misstatement. No longer would fraud be required. In advertising and in showing properties, auctioneers bear in mind the hoary but invaluable cliché that 'a closed mouth catches no flies' – apart from 'guiding' would-be purchasers on the price.

Protection for buyers

Can purchasers look to the *Consumer Information Act* of 1978 which provides penalties for misleading advertisements? Section 8(1) states that 'a person shall not publish, or cause to be published, an advertisement … if it is likely to mislead, and thereby cause loss, damage or injury to members of the public to a material degree'. There has been one prosecution of an auctioneer initiated by the director of consumer affairs – and that was in the early 1990s – over a misdescription of a house size.

The Office of Director of Consumer Affairs was established by the 1978 act. Among the functions of the director are:

- to keep under general review practices in relation to advertising
- to encourage and promote the establishment and adoption of codes of standards for advertising, and
- without prejudice to other prosecuting authorities, to bring proceedings in relation to offences under the act.

Section 7 of the act refers to false or misleading indications of prices of goods for sale. It is primarily intended to cover retail shops on the high street misleading consumers in respect of false price reductions. And, of course, property vendors, if not their agents, usually have the same status as would-be purchasers.

The recent spate of scandals in Ireland has rung a loud wake-up call in government, particularly in respect of companies legislation. The 1963 *Companies Act* is no longer a sleepy aspirational tome. The *Companies Act, 1999* is to be followed by the *Companies Act, 2000*, which will herald a major (if belated) advance in company law enforcement.

Perhaps it is now time to put the spotlight on protecting consumers seeking to make their largest life investment, as well as the purchasers of shops, factories and farms. The law, and its enforcement, should become the property purchaser's best friend. G

Pat Igoe is principal of the Dublin-based solicitors' firm Patrick Igoe and Company.

Reporting of family law cases

Letter

From: Jennifer Curry, secretary, Family Lawyers' Association

I write on behalf of the Family Lawyers' Association in relation to our successful annual conference held on 13 May in Mallow, Co Cork.

This year's conference concerned the *in camera* rule and papers were presented by Mary O'Toole SC, Dr Gerard Byrne, consultant child psychiatrist, Andrea Martin of RTE and Nuala Jackson BL. Both sides of the argument were put forward by the speakers from different perspectives. There were also lively contributions from the floor. It was acknowledged that there is a lack of accurate and consistent reporting of family law cases, particularly in the Circuit Court. A variety of options for procuring reports were discussed, including the registrar preparing a note, the parties' lawyers preparing a note, a solicitor or barrister in court for the purpose of preparing a note, and media presence in the family courts. In a 'straw poll' taken at the end of the debate by an informal show of hands, a majority of those present voted against a change in the present rule. The main concerns of those opposed to change appeared to be client privacy and fear of sensational reporting.

It should be noted that the headline contained in the *Irish Times* on 15 May incorrectly stated that the Family Lawyers' Association supported relaxation of the *in camera* rule. As pointed out in a subsequent letter to tha newspaper, the opposite was, in fact, the case. The association is interested in views held by other members of the profession on the issue of reporting family law cases and the manner in which such reports might be obtained.

Such contributions can be addressed to the secretary of the Family Lawyers' Association, Distillery Building, Church Street, Dublin 7.

W w ul lk t t lly u ut l w frm th t nv sts n y ur futur

C r r t l wy rs
L n n n UK r ns 1 - 5 yrs u l f

L s n f th w rl 's l n n m st yn m c l w frms w th turn v r n xc ss f £135m n r s n f st. W th n tw rk f ff c s thr u h ut En l n n Sc tl n w ls h v r ly x n n Eur n r ct c thr u h m m rsh f L n rtn rs, n xclus v ll nc f m r Eur n f rms n th UK, r s, rc l n , russ ls n mst r m.

t th c r f L 's us n ss s th C r r t r u wh ch c n ff r m t us y un l wy rs n cc l r t c r r th n unr v ll rtun t s.
C ns r th f ll w n

- L h s s l t v lu s wh ch cus r m s. m rt nt ss . ur l . W h v v l un u curr cul r r ch l l nn , s h st c l r s l syst m n h v st l sh m nt rr n s c n m nt r r ms.
- L s m rt cr cy. utst n n ty s r w r w th utst n n c r r r r ss n. Th c r rs f m ny f th m st s n r l wy rs n th r u rt st m ny t th s.
- L 's C r r t r u ct n h ln m k n ls. F r nst nc s nc 3 ur v ntur c t l t m h s ct m r ls (5 w th r r t v lu f £7. n) t n ny t r l w f rm wh l ur c r r t fr nc t m h v ct n 1 t t ns s nc 1 w th n r t v lu f £1.72 n.
- l nv s s n nfr structur . In th l st y r l n w nv st £ m n IT n h v m v t w rl cl ss n w r m s s n th C ty, rm n h m, l s, russ ls n H n K n .
- ul m st ll w r v n hly su t v cul ur th t r c ur s v rs ly. s n r wth n l UN.

W r c mm tt t m k n L n m l y r f ch c n w ul l k th rtun ty t t lly u why w th nk y u sh ul t lk n t us. C r r t rtn rs fr m th f rm's C ty ff c w ll n u l n v r th c m n w ks.

T k r rtun t r l c t
M ch l S lv r cru tm nt M n r
UK wl r

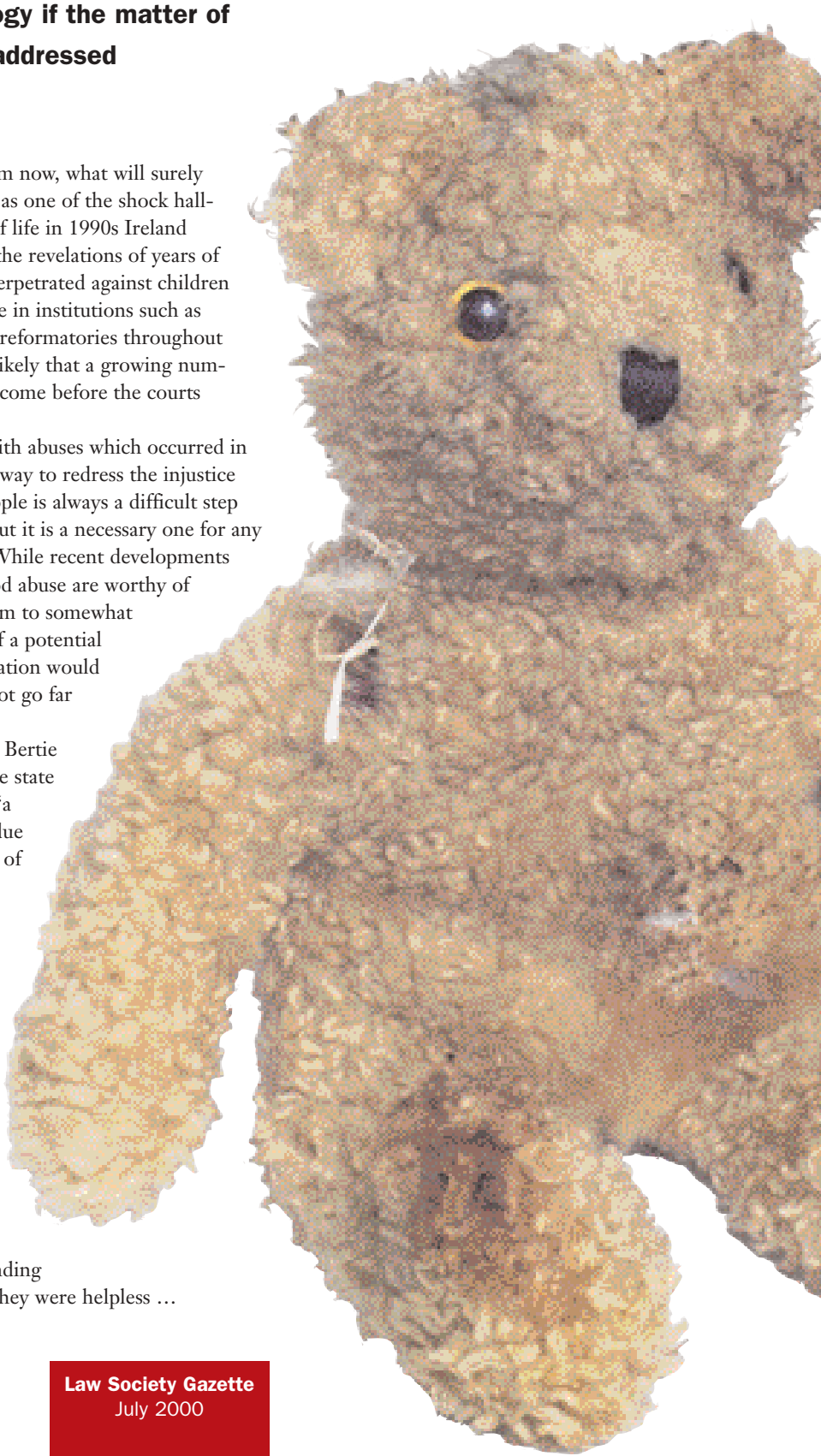
7 111 111

r w t L m 13 N S L n n EC2V 7EE m l m ch l sl v r . m

www. l .c m

When

At a time of scandal fatigue, the story of children systematically abused in industrial schools touched the hearts of the Irish people. The taoiseach even apologised to the victims on behalf of the state. But, as Karen O'Connor points out, the shine of sincerity will fade from that apology if the matter of liability is not addressed



Years from now, what will surely be seen as one of the shock hallmarks of life in 1990s Ireland will be the revelations of years of abuse perpetrated against children while they were in care in institutions such as industrial schools and reformatories throughout the country. It seems likely that a growing number of these cases will come before the courts shortly.

Coming to terms with abuses which occurred in the past and finding a way to redress the injustice caused to so many people is always a difficult step for a society to take, but it is a necessary one for any civilised community. While recent developments in relation to childhood abuse are worthy of comment and may seem to somewhat strengthen the hand of a potential litigant, closer examination would suggest that they do not go far enough.

Last year Taoiseach Bertie Ahern, on behalf of the state and its citizens, made 'a sincere and long overdue apology to the victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue'. The statement went on to say that too many children had been denied love, care and security. 'Abuse ruined their childhoods and has been an ever-present part of their adult lives, reminding them of a time when they were helpless …

INSTITUTIONAL ABUSE

saying *sorry* isn't enough

We believe they were gravely wronged … we must do all we can to overcome the lasting effects of their ordeals'.

In making this apology, the state did not admit liability, but it did signal the introduction of a number of measures such as the establishment of a Commission to Inquire into Childhood Abuse, the introduction of changes to the *Statute of limitations* (extending the concept of disability to include victims of childhood sexual abuse), proposals on mandatory reporting of instances of the sexual abuse of children to be published in a white paper, and the enactment of legislation for a register of sex offenders.

According to the *Commission to Inquire into Child Abuse Act, 2000*, the commission is to have four main functions: to provide an opportunity to persons who have suffered abuse in childhood institutions during the relevant period to tell their stories to a committee; to inquire into the abuse of children in institutions in order to determine the causes, nature, circumstances and extent of such abuse; to determine the extent to which institutions, management and regulatory authorities had responsibility for the abuse; and to publish a report to the public. The 'relevant period' is defined as being from and including 1940 (or such earlier year as the commission may determine) up to and including the year 1999 and such later year (if any) as the commission may determine.

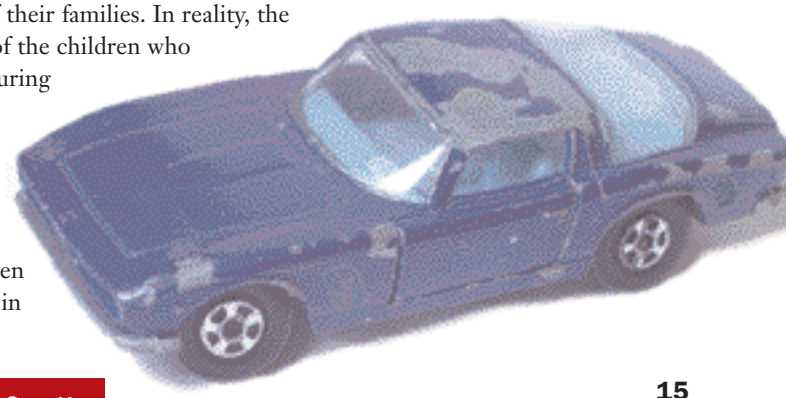
MAIN POINTS

- Commission to Inquire into Childhood Abuse held first meeting last month
- Change to *Statute of limitations* excludes victims of physical and mental abuse
- Is state seeking to limit field of potential litigants?

No amnesty or immunity from liability

The Commission to Inquire into Child Abuse had its first public sitting on 29 June at which its chairwoman, Ms Justice Laffoy, stated categorically that in relation to admissions of wrongdoing there would be no amnesty or immunity from criminal or civil liability.

The institutions referred to are defined as including industrial schools, reformatories, orphanages, hospitals, children's homes and any other places where children are cared for other than as members of their families. In reality, the vast majority of the children who were in care during the 'relevant period' were detained in industrial schools. Over 100,000 children were detained in



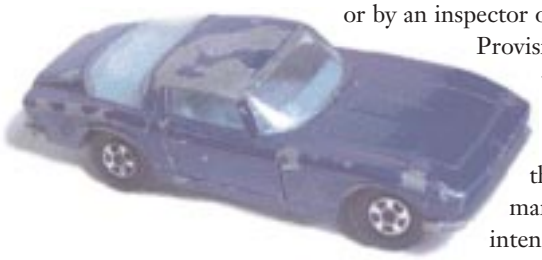
'Contesting all of these cases right up to the steps of the Four Courts will simply prolong the process and cause further distress to those people who had their childhoods ruined'

industrial schools between 1868 and 1969. In the year 1949/50, there were 51 industrial schools in existence – 36 for girls and 15 for boys – housing 6,378 children. By the end of the 1960s, the number of industrial schools had declined, with 31 remaining in which there were less than 2,000 children resident.

Link between the schools and the state

The *Children Act 1908* provides definitions for both industrial and reformatory schools. Section 44(1) of that act states that: 'The expression "industrial school" means a school for the industrial training of children, in which children are lodged, clothed, and fed, as well as taught'. 'Reformatory schools' are defined similarly but in relation to 'youthful offenders'. The act goes on to define the expression 'certified school' as meaning 'a reformatory or industrial school which is certified in accordance with the provisions of this part of this act'. The importance of certification of such schools should not be underestimated, as it was a crucial part of the link between these schools and the role of the state in relation to their existence.

Certification took place in accordance with section 45 of the act, which made provision for the examination by the inspectorate into the condition and regulations of a school and its fitness for the reception of children and youthful offenders. The act provided for the appointment by the secretary of state of a chief inspector of industrial and reformatory schools who would be assisted by inspectors and assistant inspectors. Section 46(3) says that: 'every certified school shall, at least once in every year, be inspected by the chief inspector … or by an inspector or assistant inspector'.



Provision was also made for the withdrawal of certification in the event of the secretary of state being dissatisfied with the 'condition, rules, management or super-intendence of a certified school'.

The role of the state in relation to certifying and regulating these schools is further evident in section 3(1) of the *Children Act, 1941* whereby 'the minister may make regulations for the conduct of certified schools and, in particular and without prejudice to the generality of the foregoing, such regulations may make provision in relation to the education and training to be given to persons detained in such schools and the safeguarding of the health of such persons'.

It is noteworthy that the committee set up by the government to carry out a survey of reformatory and industrial schools, presided over by District Justice Eileen Kennedy in 1967, stated in its 1970 *Reformatory and industrial schools systems report:* 'The system of inspection of industrial schools and reformatories has, so far as we can judge, been totally ineffective … We are satisfied that the statutory obligation to inspect these schools at least once a year has not always been fulfilled but, even if it had, this would not have been sufficient'.

Destitution, prostitution and drunkeness

In accordance with section 58(1) of the 1908 act, those liable to be sent to industrial schools included children found begging or receiving alms, destitute children, those under the care of a parent or guardian who by reason of criminal or drunken habits is unfit, the daughter of a father convicted of an offence under section 4 or 5 of the *Criminal Law Amendment Act 1885* (carnal knowledge of a girl under the age of 13, carnal knowledge of a girl over 13 and under 16 years of age respectively), and any child who frequents the company of a reputed thief or prostitute or who is lodging in the house used by a prostitute for the purposes of prostitution.

One particular ground under which a child was detained in an industrial school was contained in section 58(1)(b) of the act which refers, among other things, to a parent or guardian who does not exercise proper guardianship. It appears that this section was interpreted rather widely by the courts and it was by far the most common reason for detention.

PHOTOS: roslyn@indigo.ie

It is interesting to note that in December 1955, in the *State (Doyle) v Minister for Education*, the Supreme Court found section 10 of the *Children Act, 1941* to be invalid. The section in question was amending section 58 of the 1908 act and provided that a child under 15 years found destitute and not an orphan, but whose parents were unable to support it, could be sent to an industrial school for 'such time as to the court may seem proper for the teaching and training of such child'. This was a case in which the father of a child had applied to the court to have the child sent to an industrial school. The mother had deserted and when the father's circumstances had improved he had sought the return of his child. He was refused custody of his daughter by the minister for education. The case went to the Supreme Court on the constitutional validity of section 10. The court declared that the section was invalid 'as being repugnant to the constitution inasmuch and in so far as it deprives a parent with whose consent a child has been sent to a certified industrial school … of the right to resume control of the child so as to provide for its education when that parent is willing and able to do so'.

The court had considered both the inalienable right and duty of parents to provide for the education of their children in accordance with article 42.1 of the constitution, and the provision under article 42.5 allowing for the state in exceptional cases, as guardian of the common good, to supply the place of the parents 'but always with due regard for the natural and imprescriptible rights of the child'.

'The exclusion of victims of childhood abuse which was physical or mental in nature appears to be completely arbitrary'

As previously mentioned, one of the areas in which a change had been promised by the government was in relation to the *Statute of limitations*. The *Statute of Limitations (Amendment) Bill, 1998* was signed by President McAleese on 21 June of this year. It extends the concept of disability contained in the 1957 *Statute of limitations* to include a person bringing an action 'founded on tort in respect of an act of sexual abuse committed against him or her'. The extension of disability to include victims of childhood sexual abuse clearly excludes all of those victims who were physically or mentally abused while in care. Arguably, the vast majority of victims will not benefit from the change to the *Statute of limitations* unless the matter of physical and mental abuse is addressed.

Limiting the field of potential litigants

The likelihood is that, as with many of the recent army deafness cases, any potential litigant would have to come within section 3 of the *Statute of Limitations (Amendment) Act, 1991* which says that: 'An action … claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty … shall not be brought after the expiration of three years from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured'. Furthermore, he or she would have to satisfy the court on the question of the date of knowledge criteria contained in section 2(2): 'for the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire (a) from the facts observable or ascertainable by him, or (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek'.

While the state has apologised on behalf of all of us to the victims of childhood abuse, the shine of sincerity will fade from that apology if the matter of liability is not addressed. Contesting all of these cases right up to the steps of the Four Courts – as with other areas of litigation involving the state – will simply prolong the process and cause further distress to those people who, as the taoiseach pointed out, were previously 'helpless' and had their 'childhoods ruined'. The exclusion of victims of childhood abuse which was physical or mental in nature from the changes to the *Statute of limitations* appears to be completely arbitrary and has the effect of limiting the field of potential litigants.

Those who suffered childhood abuse while in certified institutions have suffered enough. The state should make every effort to expedite matters to afford these victims the opportunity of redress and thereby give genuine and practical meaning to the taoiseach's stated goal to 'do all we can to overcome the lasting effects of their ordeals'. G

Karen O'Connor BL is a Dublin-based barrister.

A basic guide to discove

Discovery is a central part of litigation, but some practitioners regard it with trepidation because it can often involve sifting through reams of documents and the preparation of extensive accompanying affidavits. Here, Eoin Dee looks at its essential elements

Discovery is a way of ensuring that the full facts relating to any litigation are actually brought before the courts. This is fundamental to the administration of justice and is provided for by order 31 of the *Rules of the Superior Courts*.

Until statutory instrument 233 of 1999 came into effect on 3 August last year, what usually happened was that the plaintiff's solicitor would seek voluntary discovery and list the documentation required. There would then follow a series of 'bargaining' letters between both sets of solicitors concerning what would be handed over. Sometimes agreement would be reached, sometimes not. Lacking agreement between the respective solicitors, the plaintiff's solicitor would serve the defendant's solicitor with a motion for discovery. This would bring the matter before the court.

Things have changed as a result of SI 233. Now, the party seeking discovery must seek voluntary discovery of the documents before issuing any motions, 'furnishing the reasons why each category of documents is required to be discovered'. This will at least compel the party seeking discovery to provide a *prima facie* reason why the documentation should be discovered. But the new rules will not necessarily stop the party resisting discovery from trying to withhold documentation.

In an ideal world, litigation lawyers would have a set of hard and fast rules telling us what we must produce on discovery and what we can avoid producing. Unfortunately, no such rules exist. All we have are guidelines.

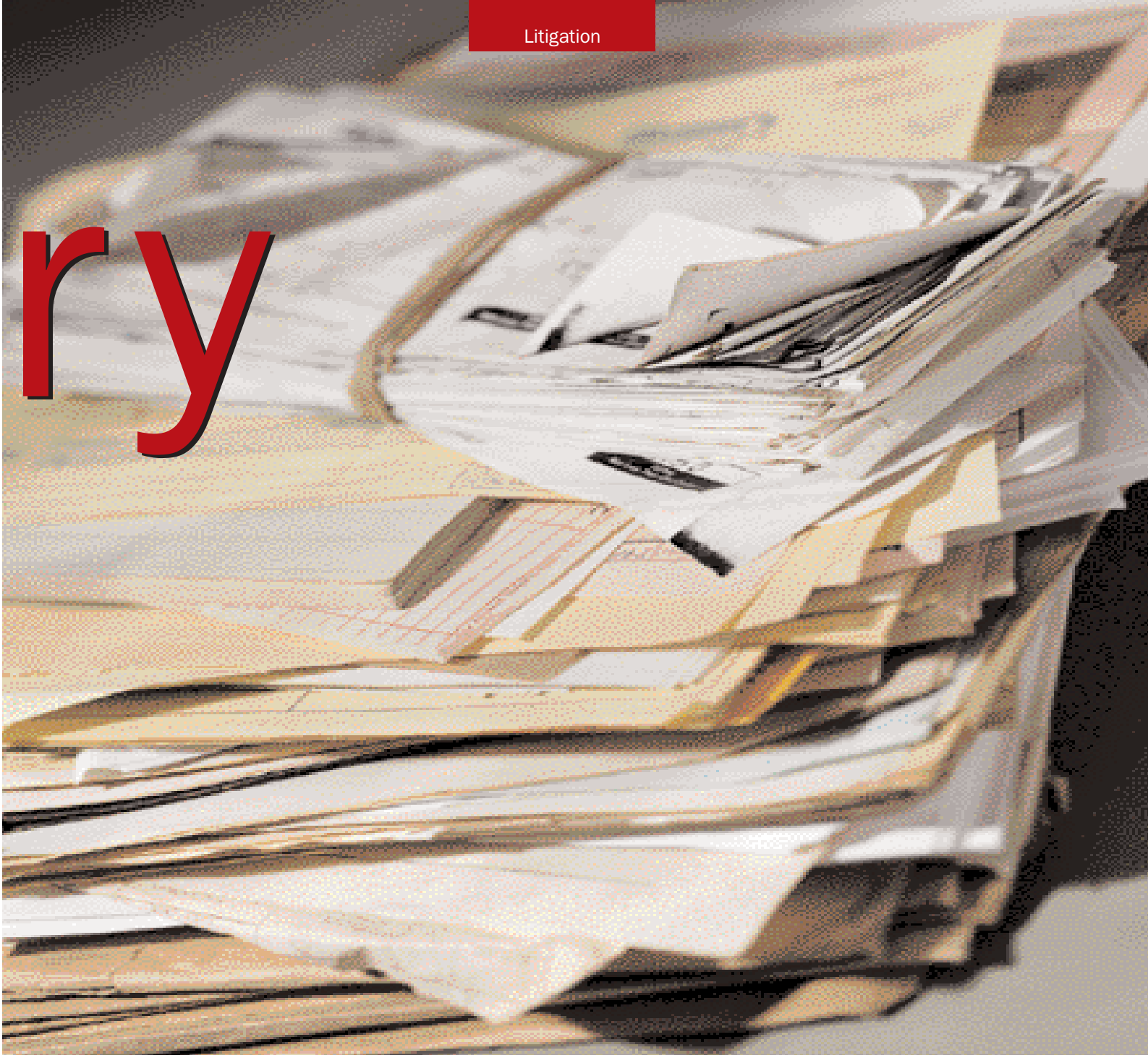
So, first, let's look at what must be discovered. There are three essential elements to this: there must be a 'document', that 'document' must be 'relevant', and the 'document' must be in the 'possession, custody or power' of the person against

WHAT IS A DOCUMENT?

It is clear that not all pieces of paper can constitute 'documents' for the purposes of discovery: a piece of paper must contain information to constitute a 'document'; a blank sheet is not a 'document'. It should also be noted that a photograph can constitute a 'document' as was the case in England in *Lyell v Kennedy (No 3)* ([1884] 50LT730).

This decision appears to have found favour here. In a High Court case in 1950, *Lynch v Fleming*, McLoughlin J stated that x-rays or photographs were 'not capable as being interpreted as the thoughts or ideas of any person'. This was overturned in the Supreme Court. In *McCarthy v O'Flynn* ([1977] IR127), Henchy J defined a document as including 'anything which, if adduced in evidence at the hearing of the proceedings, would be put in or annexed to the court file of the proceedings'. In this same case, Kenny J defined the main components of a document as being 'something which gives information'. In principle, there would seem to be little doubt that videotapes containing information are documents, as in *Grant v South Western and County Properties Limited* ([1975] CH185).

In the modern era, of course, it would seem that computer disks should also be properly regarded as documents for the purposes of discovery.



ry

MAIN POINTS

- There must be a document to be discovered
- That document must be relevant
- It must be in the 'possession, power or custody' of the person against whom discovery is sought
- Various objections to discovery

whom discovery is sought *(see panels)*.

There must be a document. The question of what exactly constitutes a 'document' has been the subject of much debate. Certainly, it would seem that the word 'document' should be construed widely due to the more modern methods of storing and compiling information. In the UK, the *Civil Evidence Act 1968* takes this into account and puts a fairly modern spin on things. But to most litigation lawyers on a day-to-day level, it is still safe to say that discovery usually concerns normal paper documents.

The document must be relevant. A vital point is that 'relevance' must relate to 'matters in question' in the cause or matter before the court. So the question may be asked: what does 'matter in question' refer to? Consider, for instance, an action to recover land. In such a case, the 'matter in question' is not the actual thing in dispute (the land), but the *alleged title* of the plaintiff and/or the defendant.

It should be noted that if an allegation is admitted, then it ceases to be a 'matter in question' and so no discovery can be made in relation to it. This is a crucial factor which should be borne in mind by defence lawyers when drafting a relevant defence. It is best not to blindly deny allegations, such as negligence, breach of duty, breach of statutory duty and so on, as a blind denial increases the amount of 'matters in question' and consequently the scope of discoverable material.

Regarding the concept of relevance, one matter merits special mention. This is the concept of the 'fishing expedition'. Discovery will not be ordered to enable a party to conjure up a completely new case or to go trawling for evidence (see *Barclay Administration Incorporation v McClelland* [1990] FSR381).

WHAT IS A RELEVANT DOCUMENT?

This is a very important aspect of discovery and one which doubtless causes clashes between lawyers when trying to agree discovery on a voluntary basis. What exactly is 'relevant' to the proceedings?

There was a classic decision handed down by Brett LJ in the English case of *Compagnie Financière Du Pacifique v Peruvian Guano Company* ([1882] 11QBD55). In his decision, Brett LJ stated that: 'it seems to me that every document relates to the matters in question in the action which not only would be evidence upon any issue but also which, it is reasonable to suppose, contains information which may – not which must – either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary'.

This test has been tried and approved on several occasions and is now seen as a reliable one. Certainly, it has been accepted in Ireland, being analysed and approved by Kenny J in *Sterling Winthrop v Farbenfabriken Bayer AG* and applied by Costello J in *Irish Shell v Dan Ryan*.

The document must be in the 'possession, custody or power of the person against whom discovery is sought'. One can question what these words actually mean. In *Bula Limited v Tara Mines* ([1994] 1LRM111), it was stated that 'a document is within the power of a party … if he has an enforceable legal right to obtain from whoever actually holds the document inspection of it without the need to obtain the consent of anyone else'. The legal enforceable right test has subsequently been applied in *Irish Intercontinental Bank Limited v Anthony Brady* (unreported, Supreme Court, 1 June 1995, Blaney J) and also in *Charleton v Northern Bank Finance* ([1979] IR149).

In the English case of *B v B* ([1978] FAM181), Dunne J stated that *custody* meant 'the actual physical or corporeal holding of a document regardless of the right to possession'. Dunne J's ruling in this case is interesting not only because it provides a definition of *custody*, but also because it addresses the concept of someone who has the right to possess a document. In this case, Dunne J stated that 'an enforceable right to inspect' a document could be summed up by the word 'power'. The matter was further addressed by Lord Diplock in *Lonrho Limited v Shell Petroleum Limited* ([1980] 1WLR6276365), where it was stated that 'power' means an 'enforceable legal right to obtain from who actually holds the document inspection of it without the need to obtain the consent of anyone else'.

'In an ideal world, litigation lawyers would have a set of hard and fast rules telling us what we must produce on discovery. Unfortunately, no such rules exist'

Objections to discovery

Of all the objections one can make to discovery in any particular case, possibly the one most cited is legal professional privilege. The principle was first articulated by Brougham LC in *Greenhaugh v Gaskill* (1833) and refined by Jessel MR in *Anderson v Bank of British Colombia* (1876). The basic idea is that one must be able to confide completely in one's lawyer in order to properly defend legal proceedings or to properly prosecute them.

In the UK, there are two parts to the concept of legal professional privilege. The first is *legal advice privilege*. This says that communications between a lawyer in his professional capacity and his client are privileged if they are confidential and for the purpose of providing that client with legal advice. However, these purposes are construed broadly to include communications aimed at keeping the client and lawyer informed. But the boundaries are not limitless and do not cover all dialogues between lawyer and client. For example, the very fact that the person speaking is a lawyer and the person to whom he speaks is his client doesn't, in itself, afford the protection of legal advice privilege. And, of course, correspondence in furtherance of a criminal act does not attract legal advice privilege. It is also vital to remember also that the concept of legal advice privilege covers *communications* only.

In principle, the fact that communications pass via a third party should make no difference to the legal advice privilege rule. However, such a third party must be the agent for the solicitor or client for the purpose of communicating with the other party to give or obtain legal advice. It also seems to be the case that communications between a lawyer and a third party from whom he obtains information which he passes on to his client are also privileged because there is no basis for separating the parts of the lawyer/client communication from other parts.

The second arm of legal professional privilege in the UK is *litigation privilege*. The basic rule of litigation privilege is that confidential communications made after litigation is started, or even contemplated, between (a) the lawyer and client, (b) the lawyer and his non-professional agent or (c) the lawyer and a third party, for the sole or dominant purpose of such litigation (for seeking or giving advice or obtaining evidence or information leading to such obtaining), are privileged from production. It is necessary, as with advice privilege, that the communication be confidential. In this way, no communication by the opposing party can ever be confidential or privileged, for example, letters between the opposing lawyers during the course of a particular case.

So what is the situation regarding legal professional privilege in this jurisdiction? It is accepted in an Irish context that proceedings must be in train or contemplated in order to attract the privilege. This opens up another issue, namely, when are proceedings 'contemplated'?

In Ireland, the matter has been addressed in *Silver Hill Duckling v Minister for Agriculture* ([1997] IR289 [1985] ILRM516). In this case, O'Halloran J followed (or was at least influenced by) the decision in *Crompton Business Machines Ltd v Customs & Excise (No 2)* ([1974] AC405) and stated that once it became apparent to both sides that they would not reach agreement and that arbitration proceedings were inevitable, then litigation could be regarded as apprehended or threatened.

As in the UK, where there is legal advice privilege and litigation privilege, the Irish courts now seem to distinguish between legal advice and legal assistance.

WHAT CONSTITUTES POSSESSION?

What constitutes 'possession, custody or power'? The *Rules of the Superior Courts 1986* refer to documents in one's 'possession or power' (order 31, rule 12(i)). The UK rules refer to 'possession, custody or power'. Certain Australian states follow the Irish example, while the US *Federal rules of civil procedure* refer to 'possession, custody or control'.

It should be noted by the litigation lawyer, however, that only one of the elements of 'possession, custody or power' need be satisfied for the document to come under the ambit of discovery. It should also be noted that order 31, rule 12 (i) of the Irish superior court rules refers to 'documents which are, or have been' in 'the possession or power' of the one against whom discovery is sought.

In this way, there appears to be no past or future 'cut-off time' in respect of which discovery may be made. The effect of this is that 'relevant' documents coming into a party's power or possession at any stage after proceedings have begun, and even during trial, are discoverable. Indeed, order 31, rule 15 specifies that discovery may be sought 'at any time'.

This issue was addressed in the well-known case of *Smurfit Paribas Bank Ltd v AAB Export Finance Ltd* ([1990] 1IR469; [1990] 1LRM4589). In this case, the plaintiffs sought discovery of documents consisting of instructions which the defendant's solicitors had received from their client to enable them to complete a legal mortgage which was in issue in the proceedings. In the High Court, Costello J held that the documents were not entitled to privilege because (a) they did not contain or request legal advice, (b) they did not contain any information or remarks which one might see as 'confidential', (c) they consisted of statements of fact relating to a legal transaction of a non-litigious nature, and (d) they contained no information of a confidential nature.

In the Supreme Court, where the appeal was rejected, Finlay CJ held that where legal professional privilege is claimed for legal assistance as distinct from legal advice, an applicant would have to satisfy the court that the legal assistance rendered by a solicitor to a client is closely or approximately linked to the conduct of litigation and the administration of justice in the courts.

Legal advice privilege apart, how else might one resist discovery of documentation? There are many other means to do this: public interest immunity, privilege against incrimination, diplomatic privilege, statutory rights to privilege, and the constitutional right to life and bodily integrity (see *Burke v Central Independent Television plc* [1994] 2IR61). Each of these would take an entire article by itself, so for the sake of brevity I propose to examine one heading from this list which is important to Irish litigation lawyers: 'without prejudice' privilege.

'Without prejudice' privilege

What distinguishes 'without prejudice' privilege from other forms of privilege is that it largely concerns information known to opposing parties. The basic rule is that evidence to prove admissions made by a party in the course of genuine negotiations to settle actual or contemplated litigation is inadmissible in the same or any subsequent litigation connected to the same subject matter. The reasoning behind this is to encourage settlement of cases, and it is felt in judicial circles that people are more likely to be able to settle matters if they know that nothing they say can later be used against them by the opposing party.

So how does all of this impact on the topic of discovery? Imagine a case in which there are two or more defendants. What if the plaintiff's case against one of the defendants is settled? Can the remaining defendant obtain access to documents concerning the settlement negotiations in the hope that this will help his defence or enable him to get out of the action for less money? This is how discovery can come into the picture. Certainly there is English authority to state that the use of the words 'without prejudice' on the head of communications doesn't confirm protection against discovery: this was the case in *Buckinghamshire County Council v Moran* ([1990] CL623CA).

The 'without prejudice' rule, however, means that admissions made in the course of negotiations to settle disputes are inadmissible. But if there is no dispute, then clearly the rule cannot apply, though it can apply to a letter initiating settlement negotiations. If a written agreement results from such negotiations, the rule applies to the preceding negotiations but would not seem to apply to the actual agreement itself because this is not a document which would be described as a 'without prejudice' communication.

What if, after negotiations have taken place and a matter has been settled, an issue then arises as to costs? Is 'without prejudice' privilege a problem when trying to decide the issue of costs? This may be of particular importance in matters such as injunctive proceedings. In the UK, the practice has grown up of using the expression 'without prejudice save as to costs' on letters in order to avoid this problem. In Ireland, practitioners will be familiar with the phrase 'without prejudice to taxation' used in this context.

Executive privilege

'Without prejudice' aside, in an Irish context there are many more objections to making discovery. A major objection in this jurisdiction would be that of executive privilege. This is privilege which is likely to come to light in any jurisdiction where a government institution or public body finds itself the defendant in proceedings. The public service will often object to discovery of documentation on the grounds that it impedes the smooth running of the public body in question. Indeed, there was a traditional common law practice that government ministers could not be compelled to give discovery of documentation. This concept carried over into the laws of the Irish Free State in 1922 and was affirmed in the case of *Leen v President of the Executive Council* ([1926] IR456).

In order to avoid making discovery, however, there had to be an assurance from a senior civil servant that the disclosure of the document would be detrimental

to the public interest. In the case of *Murphy v Dublin Corporation* ([1972] IR215), it was stated in the High Court that a minister had no absolute right to withhold production of a document. A ministerial objection to production of a document would be accepted unless that objection was not made in good faith. Alternatively, to force discovery of such a document, it would have to be shown that the ministerial objection was one that no reasonable minister could make or was based on a misunderstanding of issues in the case.

This particular case showed a trend against absolute discretion on the part of the public service, as indeed had been seen earlier in O'Dalaigh CJ's judgment in *The State (Quinn) v Ryan* ([1965] IR70). The significance of *Murphy v Dublin* is that the Supreme Court established that only the courts had the constitutional competence to administer justice. For this reason, the ultimate power to examine documents relevant to proceedings to ascertain if they are discoverable lies with the courts.

One case relating to *Murphy v Dublin* that deserves mention is *Ambiorix Limited v The Minister for the Environment (No 1)* ([1992] IR277). This came years after the *Murphy* decision and the state was still attempting to claim immunity for certain classes of documents and was attempting to introduce a line of English legal thinking to proceedings: namely, that once public interest immunity has been properly raised, the burden is on the party seeking disclosure of documents to show why the documents should be produced for inspection. In this case, Finlay J reiterated the principle laid down in *Murphy v Dublin* – that is, that the administration of justice is the job of the judiciary, as is the decision on what is and isn't in the public interest.

This has led to certain conclusions: the executive (state body) cannot prevent the judiciary from examining relevant documents for the purpose of deciding if they must be produced. There is no need for the judiciary to examine particular documents before deciding if they are exempt from production. Furthermore, the rank of the person in the public service preparing the document, or for whose use such documents are prepared, does not matter in deciding questions of privilege.

It should be borne in mind here, however, that the plaintiff taking an action against a public body now has an additional weapon in his armoury when it comes to obtaining documentation from the state. This is, of course, the *Freedom of Information Act, 1997*. Many plaintiffs will now simply avoid the concept of discovery and use the rights enshrined in this legislation in order to gain the information they need for their particular case.

Only time will tell how useful it will prove to plaintiffs and whether or not it will render obsolete any or all of the rules governing executive privilege outlined above. G

Eoin Dee is a solicitor with the Waterford firm Nolan Farrell & Goff.

All solicitors have experience of apprenticeships, and their memories can vary from fond recollections of valuable learning and personal development to flashbacks of disastrous lost opportunities. At a time when more than 1,200 apprentices are currently indentured, trainee solicitor John Connellan considers the relationship between master and apprentice

The new meaning of m& apprent

There seems to be universal acceptance that the master/apprentice relationship has changed dramatically over the last number of years. This is only to be expected: as the profession changes, so too do the roles of office staff. In recent years, modern practices have seen the arrival of paralegals and the development of the role of the legal executive. In an era when apprentices can simultaneously fill the role of paralegal, secretary and, occasionally, solicitor, what is the true meaning of the master/apprentice relationship?

For solicitors and apprentices alike, the focus seems to be primarily on the teaching or training of apprentices. 'In days gone by, the relationship was that of parent/child', says Brian Gallagher of solicitors Gallagher Shatter. 'However, the modern relationship is more akin to teacher and pupil'. He adds that the relationship involves 'two-way learning as much as possible in practical matters'.

Berchmans Gannon of solicitors Gannon Liddy notes that 'Historically, I would have perceived apprentices as being sort of a pupil. Today, an apprentice is somebody who comes in with some form of appreciation of the workplace, so it's a hands-on learning experience'.

Raphael King of solicitors McCann FitzGerald describes the master/apprentice relationship in succinct terms: 'For the apprentice, it is a learning relationship: learning the tools of the trade and the skills needed to be a lawyer. We are training what we hope will be our future partners'.

This benevolent interpretation of the relationship is in stark contrast to the experience of one recently-qualified solicitor. She describes her initial experience with her first master as being 'thrown in at the deep end with no supervision', adding that her Sunday evenings were destroyed by the contemplation of Monday morning face-offs with her master: 'They were the worst. I would have a knot in my stomach. I was terrified of her'. (Several of the people interviewed for this piece wished to remain anonymous, as much for their own sakes as for their masters'.)

When the master/apprentice relationship goes wrong, lack of supervision and trust can be major factors. Indeed, all of the masters interviewed for this article identified the importance of supervision as key to the success of the relationship. And those apprentices who felt that they were left unsupervised identified this as one of the fundamental flaws in the process. Since the teacher/pupil relationship is based on trust, masters must be able to trust apprentices to discharge the tasks they set and, similarly, apprentices must be able to trust masters in the instruction they give.

Many of those interviewed emphasised the importance of communication in the master/apprentice relationship. Ann Lalor, an apprentice with McCann FitzGerald, notes that: 'The masters are prepared to take the time out to teach you. There is a personal relationship, but they are not your best buddy. It's a relationship on a professional basis'.

With this in mind, it is interesting to note the number of masters still in touch with their former apprentices. It seems that, given the right set of circumstances, the relationship can be more than just master/apprentice or employer/employee.

Finding fulfilment

Asked whether he considered being a master fulfilling, Brian Gallagher was positive, terming it 'a rewarding experience'. Berchmans Gannon's response to the same question was more of a lament: 'Not any more', he said. 'Of old, it was one-to-one; today, there's a more professional approach which takes mere personality out of it'.

Some masters aspire to mould their apprentices into great solicitors, while others seem to prefer a more symbiotic relationship, as modern apprentices bring more to the offices where they train. It is no longer uncommon for an apprentice to have a post-graduate qualification or valuable work experience.

Furthermore, apprentices are more likely to have greater life experience, such as time spent travelling or working abroad.

In part because of this new breed of apprentice, there are many in the profession who can point to existing master/apprentice partnerships and even more who note the increasing retention of apprentices once they have their names added to the roll of solicitors. For many, taking on an apprentice is viewed as a rewarding experience because it adds a further dynamic to the workplace and can on occasion lend an interesting edge to the office environment. The presence of a younger professional-in-training can be regarded as beneficial by both staff and clients alike.

Looking at things from the opposite vantage point, many apprentices find their apprenticeships fulfilling on a number of levels. For some, the most significant part of their experience is learning the practicalities of law. But others stress the importance of their relationship with their masters. Indeed, several apprentices who participated in this article were more than happy to recount (off the record) lunches and evenings of revelry spent with their masters around the cities and towns of Ireland.

aster ice

Too much, too soon?

As noted above, one of the foundations for a successful master/apprentice relationship is appropriate supervision. But as the profession blithely bemoans the ever-increasing amount of business, clients and, hence, workloads – and simultaneously recognises significant staff shortages and staff costs – are apprentices getting the supervision they need?

Anecdotal evidence would suggest that apprentices have a far higher level of responsibility than ever before. Indeed, several masters acknowledge that apprentices are working rather than training. For some apprentices, there is the danger of over-exposure at too early a point in their apprenticeship. One solicitor notes that during her apprenticeship she was interviewing clients within three weeks of starting at a firm and was negotiating fees soon after. She describes the pressure in the following way: 'I went in confident and by the end of it I was a complete wreck'.

Things changed radically once she left and went to work for a new master: 'It was like going from hell to heaven', she says, adding that apprentices should not stay in untenable situations. 'If you are not getting experience, you are being exploited'.

According to Brian Gallagher, 'apprentices are asked to do more a lot earlier, and more is expected of them'.

As workloads increase across the board and affordable ancillary staff become as commonplace as *Charvet* shirts, it is only natural that an apprentice's remit expands. Berchmans Gannon feels that apprentices are under 'a lot more pressure because the role – I think of necessity – has changed. But I actually think it is better for everybody concerned'.

The Law Society has recognised the changing role of apprentices and has altered some of its programmes accordingly. 'The Law Society has increased the resources it devotes to the vocational side of an apprentice's training', observes McCann FitzGerald's Raphael King. 'The apprenticeship officer acts in the best interests of apprentices and she liaises carefully with the masters in the offices'.

So are apprentices value for money? The simple answer is yes. Certainly many apprentices, if not the vast majority, feel that they are poorly paid in the current economic climate. Some draw comparisons with trainee accountants, who can expect to earn more than £16,000 a year at a stage comparable to a post-professional course apprentice – a figure beyond the wildest dreams of many current apprentices. And many recently-qualified solicitors and apprentices feel that the introduction of a realistic living wage set by the Law Society would be a step in the right direction for apprentices and masters alike.

The future of the profession

Although it may not be reflected in the wages they pay, most masters have come to appreciate the value of a dedicated apprentice. In the words of Raphael King: 'We don't look upon apprentices as a short-term inexpensive resource; on the contrary, we take a long-term view. The quality of the firm in ten years' time is only as good as the quality of our apprentices and the training of our apprentices'.

Indeed, most would agree that today's apprentices can be viewed as quite simply the future of the profession. The master/apprentice relationship has changed substantially over the years and the better the apprenticeship an apprentice is given, the better a solicitor they will be at the end. With the profession under pressure, particularly in relation to staffing and recruitment, perhaps the by-words of the modern master/apprentice relationship should be supervision, communication and respect.

Apprentices are the future colleagues and partners of Ireland's legal profession. Without overstating the point, today's apprentice could be the present master's most rewarding investment. G

John Connellan is an apprentice solicitor with the Dublin firm Gibbons Associates.

Equal m

The sweeping provisions contained in the *Employment Equality Act, 1998* mean that you could be advising a growing number of your clients on their recruitment and employment practices. Michelle Ní Longáin explains what employers need to do to ensure that their procedures comply with the legislation

Normally a person must have a contract of employment before he or she can take legal action against an employer, but the *Employment Equality Act, 1998* means that prospective employees may now have a cause of action even if they are unsuccessful.

This issue has received considerable attention recently with the widespread reporting of the case brought by Dr Noreen Gleeson against the Mater Misericordiae Hospital and the Rotunda Hospital, where she claimed sex discrimination in the recruitment process engaged in by the two hospitals. She succeeded in her claim and was awarded £50,000 by the Labour Court. That case was heard under the *Employment Equality Act, 1977*, but this has now been replaced by the 1998 act which has greatly expanded the prohibited grounds for discrimination.

Under the 1998 act, discrimination on any of the following grounds is prohibited in recruitment and in employment generally: gender, marital status, family status, sexual orientation, religion, age, disability, race/nationality/ethnic or national origins, and membership of the travelling community.

Claims on gender grounds are treated significantly differently by the 1998 act in that the compensation which may be awarded to an unsuccessful candidate who was discriminated against is unlimited, and such claims can be brought in the Circuit Court. Candidates who believe they have been discriminated against under any of the other grounds may be awarded a maximum of £10,000.

The act prohibits discrimination in relation to access to employment, conditions of employment, training for or experience in relation to employment, promotion or re-grading, and classification of posts.

Courts and tribunals have taken a view under the earlier equality legislation that employers must be pro-active in avoiding discrimination. This line of reasoning first emerged in Ireland in the Labour Court in sexual harassment cases, such as the first reported case in 1985 (EE02/85). In that case, the court held that 'freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. The court will accordingly treat any denial of that freedom as discrimination within the terms of the *Employment Equality Act, 1977*'.

In the 1988 decision EE02/88, the court held that 'freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. The court considers that employers have a duty to ensure their employees enjoy such working conditions'. In a 1993 case, *An employee v employer* [ELR75], an employee claimed that she was suffering on-going harassment but that the employer took inadequate steps to prevent what was happening, was unsympathetic towards her and acted in an ineffective manner.

In the 1996 case *Alan v Dunnes Stores Limited* [ELR203], the Employment Appeals Tribunal held that there was a onus on an employer to inform, educate and instruct its employees on sexual harassment. In that

CLAIMS BY UNSUCCESSFUL CANDIDATES

Job applicants who believe they have been discriminated against may bring claims in respect of any of the following:

- advertising which is perceived to be directly or indirectly discriminatory
- failure to short-list a candidate who believes that they have met the essential criteria for the job
- failure to select a candidate following interview
- failure to allow a candidate to progress from one stage of recruitment to another (for example, from interview to assessment exercise or vice versa).

easures

case, the employer dismissed a security manager on the grounds of gross misconduct. The employers treated the actions of the claimant which led to his dismissal as sexual harassment. The tribunal stated that: 'whether behaviour amounts to sexual harassment in a particular incidence is determined from the point of view of the victim and what she/he regards as acceptable behaviour. Behaviour regarded as acceptable and innocent by the perpetrator, his colleagues and others may nonetheless be unacceptable to the victim and so could constitute sexual harassment. The tribunal, by majority on this point, holds that this put an onus on the employer to put in place a programme to inform, educate and instruct its employees on the issue of sexual harassment. The failure of the respondent to discharge that onus in this case was fatal'.

The tribunal held the dismissal to be unfair because, while it accepted the female employee's version of events, it considered that dismissal was disproportionate to the behaviour complained of. It ordered the re-engagement of the claimant.

The only Irish High Court judgment on sexual harassment was *Health Board v BC* [EE10/92], a 1992 case taken under 1977 legislation, where the Labour Court approach is well set out. A female employee had been seriously sexually harassed by two male employees. Vicarious liability was the main issue addressed by the court. The Labour Court said: 'The court wishes to state that in dealing in cases of sexual harassment, it does and will take into account steps taken by employers to eliminate and prevent sexual harassment in the workplace. Whilst accepting that an employer cannot guarantee total prevention of harassment, the court will look for and take note of what steps have been taken. The adoption of a code of practice, the adoption of a policy statement on prevention of sexual harassment, the existence of guidelines as to how all staff should behave and the establishment of clear grievance procedures all constitute the kind of "reasonable steps" which employers should adopt and which will be accepted by the court as evidence of the employer's *bona fides* in this type of dispute. Clearly, information about steps must be widely circulated in the place of work and information on the employer's attitude to acts of sexual harassment made available to all staff'.

MAIN POINTS

- **Unsuccessful job candidates can take legal action against employers**
- ***Employment Equality Act, 1998* greatly expands the grounds for discrimination**
- **You should advise employers to review their recruitment practices**

Taking reasonable steps

In this case, the court did not consider that the action of the board in instructing supervisors and top management as to how complaints of that nature should be dealt with constituted reasonable steps. It stated that employers 'have a duty to ensure that employees enjoy working conditions free from sexual harassment'. The Labour Court decision that the employer was vicariously liable was overturned by the High Court on the basis of the wording of the *Employment Equality Act, 1977*.

The reasoning behind the Labour Court's approach was that, because of the nature of discrimination issues such as harassment, it was not sufficient for an employer to wait for something to happen and then to prohibit its reoccurrence or to presume that employees would know that certain types of behaviour were wrong. It required employers to adopt a policy, pointing out the nature of the offence, the fact that it was not going to be tolerated and urging employees not to do what was prohibited or to suffer specified consequences if they did. Employers who did not have such policies in place would be held liable on the first occurrence of harassment, while those that did at least had a *prima facie* defence that they had taken reasonable steps to prevent the event occurring.

The US Supreme Court has taken a similar line in relation to other forms of discrimination. In the cases of *Burlington Industries Inc v Ellerth* (US Supreme Court No 97-659) and *Faragher v City of Boca Raton* (US Supreme Court No 97-282), the court held that in claims of sexual harassment employers that do not have a policy against sexual harassment in place, which is both notified to staff and operational, would have considerable difficulty in defending a claim of sexual harassment, although they would have the opportunity to attempt to do so.

The US courts have also followed these cases in applying them to race discrimination cases. It is safe to

DIRECT AND INDIRECT DISCRIMINATION

The *Employment Equality Act, 1998* prohibits discrimination, whether it is direct or indirect. *Direct* discrimination is less favourable treatment of an employee on a discriminatory ground. It may not be deliberate treatment, but it can usually be identified. *Indirect* discrimination is a more difficult concept. Even if an employer applies the same rules to all candidates, a successful claim for discrimination may still be brought. This may happen if the rule has a significantly greater adverse impact on one group than another, with the groups being distinguished on a discriminatory ground.

The most usual example is lower pay/benefits for part-time workers, who are usually married women with children. This may indirectly discriminate on the grounds of gender, marital status and family status. An employer must be able to justify indirect discrimination on the gender ground by objective factors unrelated to the employee's sex. Indirect discrimination on the other grounds may be justified by the employer as being reasonable in other circumstances of the case. This is a less difficult test to satisfy, however. It is advisable to ensure that an employer can always objectively justify any indirectly discriminatory practices. If so, the practices will be reasonable in all the circumstances.

assume that Irish tribunals and courts will require employers to have in place policies aimed at avoiding any form of discrimination occurring before it actually does occur. If they don't, they are unlikely to be able to deny vicarious liability.

Again, simply having a policy is not enough. An employer must be able to show that all employees have been made aware of the policy and have been given suitable training. In particular, recruiters must be given training to ensure that they can properly implement the policies. Refresher training is also advisable.

Recruitment practices

Recruiters cannot simply select the candidate who appeals to them most for whatever reason. The concept of 'face fits' is well recognised in domestic and international discrimination law, and there will be little sympathy for recruiters who operate on that basis. The net result is that recruiters often appoint staff who are like themselves, therefore perpetuating the identity of the existing group (for example, the appointment of white Irish heterosexual non-disabled male candidates by recruiters who also fit that description). That is not to say that recruiters can't select such a candidate, but they must have objective and justifiable reasons for their selection, and must be in a position to defend against allegations of discrimination.

The suggested approach to recruitment may seem a very onerous task, but it simply means that employers must formalise the selection process they may already follow to a degree. A selection committee should be nominated for each post. It is advisable that more than one person conducts each selection exercise to avoid allegations of individual bias or favouritism. If possible, the selection committee should be as diverse as possible, particularly in respect of gender and race. The greater the diversity, the better. Smaller companies or sole traders will obviously have a difficulty in doing this, but they should be aware of best practices and seek help from outside, if necessary. If they are to carry out interviews on an individual basis, then they must be acutely aware of what is expected of them and be scrupulously fair in how they go about it.

The same selection committee should ideally conduct the entire selection exercise to ensure continuity and consistency of decisions. The exercise consists of the following stages.

Advertisement of the post. Posts should be advertised and not filled by word of mouth or by recommendations from existing staff. This policy was found to discriminate on the grounds of religion in industry in Northern Ireland and on grounds of race in the car industry in England. If jobs are not advertised, members of minority groups that are unrepresented in the workplace will not know of their existence or have the opportunity to apply.

The director of equality investigations is empowered to conduct investigations and may do so where a company does not advertise positions but appoints new employees/officers. The Equality Authority may injunct a recruitment exercise if the advertisement seems to be discriminatory. The advertisement must be prepared by the selection committee – or at least approved by the committee on the basis of essential and desirable criteria.

Discrimination claims can be brought by people who have not even applied for a job but who have seen an advertisement that, on the face of it, indicates that an employer intends to discriminate in the selection process with no justification for doing so. For example, an advertisement saying that employees must be aged between 30 and 45 could give rise to successful claims by individuals who would have been potential applicants for the post had it not been for the discriminatory wording. Claims could be brought both by individuals under 30 and over 45, as the law does not simply protect older workers, unlike the US age-discrimination legislation. An employer will only successfully defend the claim if it can be shown that the age requirement is essential for the post, and that may be difficult to prove.

Application forms/CVs. It is generally better to require candidates to complete a standard application form in a selection exercise to ensure that all candidates are being assessed on the basis of the same objectively-necessary information. You should ensure that the questions asked in the application are not of themselves discriminatory.

The date of birth of the employee is usually irrelevant. Their national or ethnic origins are irrelevant. Any disability which they may have is irrelevant, save that it is advisable to include a question asking candidates whether or not they have a disability which they think you should be aware of, and whether or not there are any adjustments which they need to accommodate them in attending the interview and/or in performing the post, if appointed. The marital/family status of a prospective employee is irrelevant. In particular, as is now well known, any questions about how the children of a prospective employee are to be cared for during the working day

will lead to a clear finding of discrimination.

Questions about the occupation of the parents of the candidates could also be discriminatory, particularly on the ground of membership of the travelling community. Such information is not relevant and implies the 'face fits' approach.

Drafting the job description and person specification. The job description should list the duties to be carried out by the prospective employee. The person specification should set out essential and desirable criteria to be satisfied by the successful candidate. Both of these documents should be given to candidates with their application forms. The committee should ensure that all of the criteria are necessary and are not arbitrary and discriminatory. For example, a requirement that an employee will have a certain amount of full-time work rather than part-time work experience could be indirectly discriminatory on the grounds of gender, marital and family status and possibly on the grounds of disability. As far as possible, the criteria should be capable of objective assessment; subjectivity can lead to allegations of discrimination.

Once set, the essential and desirable criteria for short-listing should be applied consistently to all candidates. If the selection committee considers that a particular candidate is likely to be suitable despite the fact that they do not comply with one or more of the criteria, it must review the short list to allow the same leeway to all the candidates on it. This is to ensure that the exercise is non-discriminatory and is seen to be so. Reviewing the criteria should be approached with caution. The committee must have non-discriminatory reasons for the review to avoid the suspicion that a job has been tailored to fit a particular candidate and that this has been done for discriminatory reasons.

Arrangements for the interview. All candidates must be treated in the same manner in arrangements for interviews, in that each must be given the same amount of time and the same basic questions must be asked of each. The selection committee should draft a list of guideline questions to be asked, decide which members of the committee will ask particular questions, and what answers are expected from candidates.

A detailed interview scoring system should be prepared in advance. This involves setting a list of questions, the bullet points or headings which should be covered in an answer and the scoring which will be applied to each answer (for example, the marks which will be given to covering each one of the possible headings in the reply and any weighting of such remarks). All interviewers should complete their score sheets during, or immediately after, the interview. The headings can be ticked off during the interview. If detailed assessment sheets are completed during the interview, it is likely to make for an awkward and cumbersome process. However, the score sheets should be completed promptly afterwards, when all members of the selection committee are together.

The assessment sheets should not be taken away from the premises where the interviewing is being conducted to avoid any suggestion of discussion of candidates and their merits or unrelated factors with people outside the committee. Assessment sheets should be retained for at least 12 months after the appointment, as claims may be brought during that period. The original assessment sheets will be important evidence for the equality officer in making a determination.

The only exception to ensuring identical arrangements for interviews is where an interview arrangement may indirectly discriminate against a candidate. If a candidate has identified a medical need or disability in their application form or CV, that must be taken into account, where possible, in arranging the interview. For example, holding an interview in a room with fluorescent lighting may adversely affect a candidate with epilepsy who may be sensitive to such lighting, thereby damaging his performance. If the interview is to take place on a second floor and there is no lift, a candidate who uses a wheelchair or walking aid may find himself unable to attend the interview. It is likely that such 'discrimination' could be rectified by interviewing the candidate on a ground floor.

Feedback. If unsuccessful candidates request feedback following an interview, this should be given to them. This is likely to avoid unnecessary and groundless litigation. In the UK, where discrimination on some of these grounds in the recruitment process has been prohibited for years, many claims are brought because a candidate does not know why they were not selected for a post and so believe that the reason must be, for example, their race or disability. In many cases, when documents have been exchanged prior to a hearing, it becomes clear to the disgruntled candidate that they were not short-listed for a non-discriminatory reason – for example, because they did not meet the requirements for the job or because they did not satisfy the requirements as fully as one or more of the other candidates. Had such information been disclosed to the candidate when requested, unnecessary and expensive litigation with the potential to damage the reputation of the employer would probably not have arisen. A culture of secrecy is likely to foster a belief that there is also a culture of discrimination.

Your employer clients should be advised to review their recruitment practices along the lines described above. They may feel that the steps set out are excessive and unnecessary, but they should be strongly advised to the contrary. In the recent case of Dr Gleeson, under the 1977 act, the Labour Court's decision was strongly influenced by the hospitals' failure to set criteria before the interview and the non-availability of notes written during the interview. The court recommended that this be changed for future interviews.

This advice should be heeded by all potential employers to avoid what may be protracted, expensive and public court cases. Meanwhile, solicitors should be prepared for litigation. G

Michelle Ní Longáin is a solicitor in the employment law department of the Dublin firm BCM Hanby Wallace. Queries on employment discrimination and related issues should be directed to the Law Society's Employment Law Committee.

'If jobs are not advertised, members of minority groups that are unrepresented in the workplace will not know of their existence or have the opportunity to apply'

Tech trends

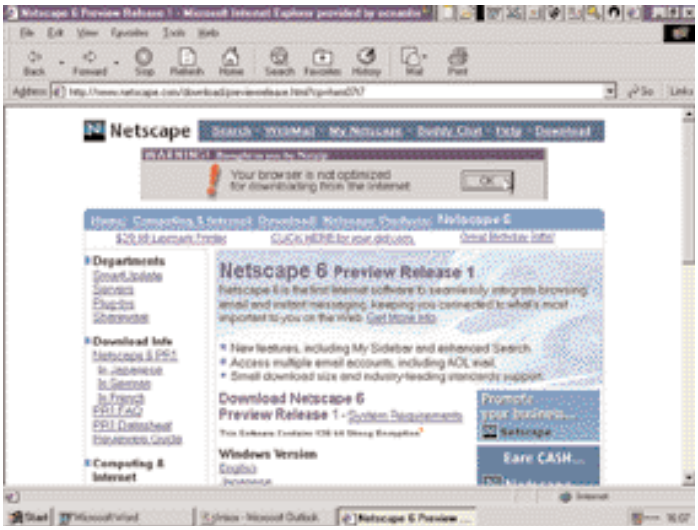
Compiled by Maria Behan

Print-a-go-go

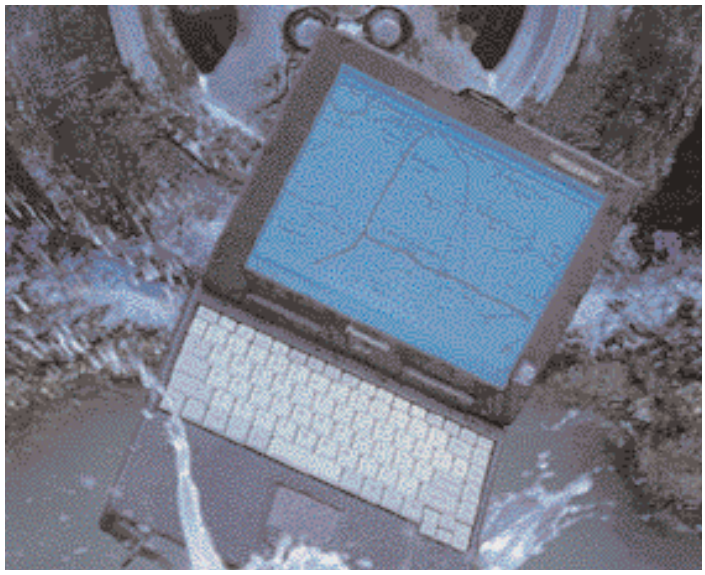
On-the-go types may appreciate Hewlett-Packard's DeskJet 350C mobile printer, which the company claims is robust enough for daily use. It spits out both black-and-white and colour jobs pretty quickly and produces high-resolution output – 600 x 600 dpi for b/w pages and 600 x 300 dpi for colour creations. It also sports a document feeder that can handle up to 30 pages at a time. *Available for about £310 at computer outlets or by calling Hewlett-Packard on 1850 474727.*

Sticking it to Bill Gates

If you've always preferred David to Goliath and you long for an Internet browser that's outside the Microsoft empire, you might want to download Netscape's latest version of its pioneering Internet browser. The company claims that *Netscape 6* is the first Net software to seamlessly integrate browsing, e-mail and instant messaging – and it won't even cost you a cent. Bill, that's gotta hurt! *Available as a free download from* http://www.netscape.com.



Travelling rough



Notebook PCs are more numerous these days, as are cases of damaged units and lost data due to dropping, banging, bumping, and pouring pints of lager over the keyboard during plane turbulence. Panasonic's *Toughbook* line is designed to withstand these and other major causes of harm to notebooks. The company says the new notebooks' magnesium-alloy casing and special gel-protected hard drives absorb 66% of the impact shock sustained by a laptop when it's dropped (the number one cause of untimely notebook demise). Indeed, Panasonic claims these mobile PCs have an overall failure rate of less than 2% – four times less than the industry standard. All five models in the *Toughbook* range sport a 'field-design' LCD screen that allows for a readable display even when outdoors, and some models feature touch screens. *Available at computer outlets, priced between £2,210 and £4,400, depending on the model.*

On the case

If case management crises are getting you down, you might want to check out a software program called OPSIS *Solicitor*. A practice management system that incorporates diary and file management as well as time- and cost-recording, it's designed to emulate the way most solicitors work. The program lets you create e-mails and faxes from within the system and groups material around a client record, keeping track of correspondence, to-do-lists, activities and appointments. *Ten-user licences are approximately £12,000, including installation, customisation and training. Contact Opsis on tel: 01 294 2903.*

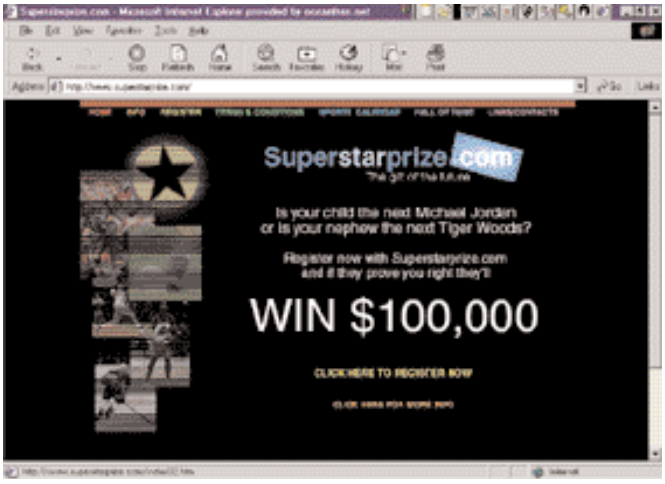
May the force be with you

Logitech's *WingMan* mouse lets you 'feel' your way around cyberspace. Using a technology the company calls 'force feedback', this new-age navigational device offers a tactile interpretation of the graphical layer included in games, software applications and websites. What this gibberish actually means is that gamers will reel from explosions and bump across rocky terrain as they battle bad guys or race for the finish line. Web surfers – especially new-comers – will find that the *WingMan* makes getting around in cyberspace more instinctive and, hence, faster. *Available at computer supply shops, priced around £20.*

Sites to see

Irish Law (*www.irish-law.org*). Hosted by the UCC law department, this site offers information on various aspects of the law, courts and government, including the peace process and a section dubbed *Finding law on the web*.

American Bar Association (*http://www.abanet.org*). Those interested in legal perspectives from across the pond can visit this site for ethical discussions, expert opinion, reports and research.



Superstarprize.com (*http://www.superstarprize.com*). This website lets you gamble with your child's future, betting $15 that your kid – or that of a friend or relative – will be a famous movie star, politician, footballer or other celebrity. The wager certificate you'll receive in the post might make for a unique christening or birthday gift, and although it's the brainchild of a Dublin comedy-club entrepreneur, this site isn't joking around: the pay-out of all prizes is insured by Royal & SunAlliance.

First Call Direct (*http://www.firstcalldirect.ie*). This site offers car, travel and home insurance quotations on-line. Type in your specifics, and you should receive a quote in a minute or two. Those already insured with the company can report claims electronically, and you can also apply for a credit card or a personal loan.

Practice notes

TRANSFER OF COMMON AREAS TO MANAGEMENT COMPANY

It is the normal practice in apartment developments or other complex developments to set up a management company to look after the maintenance of the structure of the building and the provision of services to the owners and occupiers of the individual units in the development. Control of this company normally remains vested in the developers until the completion of the development and the sale of the last unit, at which stage the common areas which remain the developer's ownership should be transferred to the management company, if not already vested in it, and control of this company should be passed to the owners of the units in the development. Normally a contract is entered into at an early stage between the developers and the management company for the assurance to the latter of the common areas, such assurance to be effected following completion of the sale of the individual units.

It is the normal practice for the solicitor acting for the developer to give an undertaking to the purchaser's solicitor on the completion of the sale of each unit that a copy of the assurance of the common areas to the management company will be furnished after the assurance has been stamped and registered. The Conveyancing Committee has received complaints that there have been significant delays in the transfer of common areas in some developments and that in some cases the company in which the common areas is vested has been put into liquidation or been permitted to be struck off the register of companies.

The question of the liability of the solicitor who has given the undertaking in respect of the transfer has been raised with the committee. The first point which has to be made is that the undertaking has been given on behalf of the client and if the solicitor had no knowledge of the likelihood of the company being struck off then the solicitor can hardly be liable on foot of the undertaking. If, however, the solicitor has knowledge of the likelihood of the company being struck off, then, apart from drawing the attention of the directors to the matter, the solicitor owes a duty to the solicitors for the purchasers to whom the undertakings were given to advise them that circumstances have arisen which cast doubt on the solicitor's ability to comply with the undertakings.

In the case of a liquidation, the solicitor will presumably have notice of the proposed liquidation and in this case will not only have a duty to advise the solicitors for the purchasers of the proposed liquidation but also to advise the liquidator of the existence of the undertakings which will constitute liabilities of the company.

There have been a number of cases where the owners, dissatisfied with the provision of services by the developer, have declined to take control of the management company and, as a result, the developer has not transferred the common areas to the company. There have been cases where the owners have grouped together to provide the day-to-day services which they require on an *ad hoc* basis. However understandable this decision may have been, it leaves the management of the common areas, which of course includes the maintenance of the structure and the insurance of the building, in a most unsatisfactory state. In such a situation, the solicitor for the developer is entitled to, and should, notify the purchasers' solicitors that their clients' refusal to take control of the management company makes it impossible for the developer's solicitor to comply with the undertaking to transfer the common areas.

As indicated above, the undertaking given by the developer's solicitor should be confined to supplying a copy of the assurance to the management company.

Conveyancing Committee

VAT FORM 4A PROCEDURES

Practitioners are advised that as a result of discussions at the Indirect Taxes Sub-Committee of TALC (Tax Administrators' Liaison Committee) regarding the VAT form 4A procedures, the Revenue has advised that for VAT purposes the supply of property takes place on the earlier of:

a) The date the tenant takes up occupation of the property, or
b) The date he signs the lease.

The VAT invoice must be issued by the 15th day of the month following that in which the supply of the property takes place.

Revenue has advised that inspectors engaged in checking property transactions will pay particular importance to the requirement that the form 4B is in place on the date that the supply takes place.

Accordingly, practitioners are advised that at the commencement of negotiations for the creation of a lease that the VAT form 4A is submitted to the tenant's solicitors with the request that it can be completed immediately and returned to the landlord's solicitors. The landlord's solicitors should then submit it to the landlord's inspector of taxes and should ensure that the VAT form 4B has issued **prior to** the tenant entering into occupation of the property or signing the lease, whichever is the earlier.

The landlord must then raise the VAT invoice with the appropriate endorsement (that is, 'in accordance with section 4A of the *Value Added Tax Act, 1972*, the lessee is liable for the value-added tax of £[insert amount]') by the 15th day of the month following that in which supply of the property took place. By way of example, therefore:

- tenant is allowed enter occupation of property under an agreement for lease on 1 April 2000. The lease is signed and delivered on 1 June 2000
- the supply took place on 1 April 2000. The VAT form 4B must have issued on or before 1 April 2000 and a VAT invoice must be raised before 15 May 2000.

In view of the Revenue's stated intention to examine the 4A procedures in greater detail, practitioners will please note and ensure that the Revenue has issued the VAT form 4B before the supply takes place.

Practitioners are referred to the Revenue publication *Tax briefing* (Issue no 40, June 2000) for further information on section 4A procedures.

Probate, Administration and Taxation Committee

REGISTRAR'S COMMITTEE

The Law Society's Complaints Section and the Registrar's Committee have an obligation to investigate all complaints that are made against solicitors. With a view to dealing with complaints as expeditiously as possible, the committee wishes to remind solicitors of the absolute necessity to respond to correspondence received from the Complaints Section quickly and comprehensively, regardless of the nature of the allegations that are made. Failure to respond to the society is a matter of serious concern to the members of the committee and, once again, the lay members of the committee have highlighted communications (both with clients and the society) as a problem area. The committee is resolved to address these concerns robustly and may have no option but to refer to the Disciplinary Tribunal those solicitors who do not respond promptly (or at all) to the society's correspondence.

James McCourt, chairman

CONTRACT CLOSING DATES

It has come to the attention of the committee that a lot of unnecessary pressure and aggravation is caused to colleagues by completion dates which are too short and unreasonable being included in contracts for sale.

It is the view of the committee that in usual circumstances a reasonable completion or closing date would be *five weeks* from the date of the contract for sale.

Conveyancing Committee

HOMEBOND WARNING

HomeBond has revised its documentation to incorporate a HomeBond agreement separate from the HB10 and the HB11 which must be completed by the purchaser and the HomeBond member.

Many of the concerns in relation to the operation of the HomeBond scheme have not been addressed in the new documentation, notwithstanding strong representations by the Law Society. The following issues remain the principal concerns.

Deposits
Deposits, whether booking or contract, are not secured under the HomeBond scheme if paid before the date of registration of the dwelling in respect of which the payment has been made. Registration of the HomeBond member is not sufficient and subsequent registration is not retrospective.

HB10
Ensure that you get the original HB10 and not a copy (the original may have been sent to another prospective purchaser).

Address of property
If the address on the HB10 differs from that in the contract documentation, obtain a certificate from the vendor's solicitor confirming the property is one and the same.

Booking deposits
The stage payment cover provided by the HomeBond scheme is available only in respect of payments made to the HomeBond member. If the site vendor and developer are different entities, then care should be taken to ensure that any deposits paid are covered by the HomeBond scheme or, if not covered, are held by the vendor's solicitor as stakeholder pending completion.

Limitation on deposit cover
Notwithstanding the huge increase in the price of new homes, any payments made to the member before the issue of the form HB11 (the final notice) are covered only up to the sum of £20,000 or 15% of the purchase price, whichever is the lesser. Where the final notice has issued, then payments are covered up to the sum of £50,000 or 50% of the purchase price, whichever is the lesser. Again, care should be taken to ensure that any sums paid in excess of these amounts are held by the vendor's solicitor as stakeholder pending completion.

Limit of liability
Clause 4.2 of the HomeBond agreement provides for an overall limit of liability in respect of any one member of £400,000 subject to a discretion to HomeBond to increase that amount from time to time. Despite representations made to it, HomeBond has declined to review this figure, which in the current market is totally inadequate.

HB11
It is essential that on completion of the purchase, the form HB11 is furnished to the purchaser's solicitor.

Limitations of scheme
While the cover provided by HomeBond for major defects over a ten-year period is very valuable, it has many limitations (not least of which being the overall limit of liability in respect of any dwelling of £30,000). It is essential, therefore, that purchasers get a structural defects indemnity under seal (or at least ensure that the building agreement is executed under seal, so that they get the benefit of the structural defects cover contained therein), and that the purchaser's common-law rights are not prejudiced by the production of the structural defects indemnity.

Conveyancing Committee

STAMP DUTY ON ACQUISITION OF NEW COMMERCIAL/INDUSTRIAL PREMISES

Sections 43 and 52(2) of the *Stamp Duties Consolidation Act, 1999* provide that where the consideration in a deed is chargeable to *ad valorem* duty and is in further consideration of a covenant by the purchaser to substantially improve the property, such further consideration shall not be chargeable to duty. However, this does not apply where the works are substantially completed on signing of contracts or where the contract for the site and the building agreement are interlocked. The guidance notes to the *Stamp Duties Consolidation Act, 1999* set out the treatment applicable in such circumstances:

1. where the building on the site is not substantially completed at the date of signing of contracts and where the contract for the sale of the site and the building agreement are not interlocked, stamp duty will be assessed on the market value of the site together with the cost of any works done at the date of signing of the contracts. A certificate from the site architect should be produced, detailing the works performed and the cost of such works at the date of sale
2. a) where the building on the site is substantially completed at the date of signing of contracts, and/or
   b) the contract for the sale of the site and the building agreement are interlocked,

   stamp duty will be assessed on the entire consideration passing for the site and the building.

As a general guideline, properties will be regarded by the Revenue Commissioners as 'substantially completed' where the cost of the building work completed exceeds 75% of the total cost of the building work agreed.

In the case of a conveyance/lease combined with a building agreement for a commercial/industrial premises, the only certification required is (a) that section 29/53 of the *Stamp Duties Consolidation Act, 1999* does not apply and (b) a transaction certificate where the chargeable consideration does not exceed £60,000. There is no requirement for a certificate as to whether there is a connected building agreement or development works carried out. Accordingly, in the event of a building agreement for the purchase of an industrial site for, say, £100,000, combined with a building agreement, the usual transaction certificate that the consideration does not exceed £60,000 will not apply and it will not therefore be evident from the face of the deed whether there is a connected building agreement. Nevertheless, the onus lies with the purchaser/lessee to see to it that the deed is properly stamped where the building agreement is interlocked or the works were substantially completed at signing of contracts.

It should be remembered that, notwithstanding sections 43 and 52(2), separate statutory provisions, namely sections 29 and 53 of the *Stamp Duties Consolidation Act, 1999* (previously section 112, *Finance Act, 1990*), apply in the case of a conveyance/lease combined with a building agreement for a new dwelling house/apartment. In the case of a purchaser buying a new dwelling house/apartment, a more embracing test is applied in determining whether the combined consideration for the site and the construction works are liable to stamp duty. In such cases, the determining factor is whether the sale of the site and the building of the house/apartment are part of an arrangement or are connected in some way. In deciding this, regard will be had to:

- whether building has commenced prior to the execution of any instrument of sale, and
- whether any relationship or association exists between the builder and the vendor of the land.

There are also reliefs for certain new houses/apartments contained in sections 91 and 92 of the *Stamp Duties Consolidation Act, 1999*. The specific certificates required to be inserted in deeds relating to new houses/apartments are set out in Revenue leaflet SD7.

Probate, Administration and Taxation Committee

Connecting people to people

SOLV

SOLV Legal Recruitment specialises in placing Legal Professionals.

We currently have numerous clients offering exciting opportunities in the following areas:

Solicitors

- Corporate/Commercial - Top 10 Firms
- Pensions and Employee Benefits - Top 10 Firms
- Technology Law - Top 10 Firms
- PI/Litigation - Medium/Small Firms
- Conveyancing/Probate - Medium/Small Firms

Barristers In House

- Corporate Compliance
- Employment Law
- Competition/EU Legislation Compliance

Contact: Caroline Staunton B.A. (Hons), Barrister-at-Law, SOLV Legal Recruitment,

River Court, 17-19 Sir John Rogerson's Quay, Dublin 2.

LEGISLATION UPDATE: 16 MAY–12 JUNE 2000

ACTS PASSED

Human Rights Commission Act, 2000

Number: 9/2000

Contents note: Establishes a human rights commission to protect and promote human rights, based on United Nations guidelines, in accordance with the terms of the agreement reached in the multi-party talks in Belfast on 10/4/1998 (*Good Friday agreement*)

Date enacted: 31/5/2000

Commencement date: 31/5/2000; establishment day order to be made for the purposes of the act

Multilateral Investment Guarantee Agency (Amendment) Act, 2000

Number: 10/2000

Contents note: Enables the government to subscribe 281 shares in the 1998 Capital Increase of the Multilateral Investment Guarantee Agency (MIGA). Amends the *Multilateral Investment Guarantee Agency Act, 1988* by providing a specific provision to allow the minister for finance to make the above subscription. MIGA was established in 1988 as a member of the World Bank Group. The main object of the agency is to provide insurance cover for direct foreign investment in developing countries

Date enacted: 7/6/2000

Commencement date: 7/6/2000

SELECTED STATUTORY INSTRUMENTS

District Court (Offences Against the State (Amendment) Act, 1998) Rules 2000

Number: SI 166/2000

Contents note: Amend order 17 of the *District Court Rules 1997* (SI 93/1997) by the addition of an application and warrant to further detain a person arrested under section 30 of the *Offences Against the State Act, 1939*, as amended by section 10 of the *Offences Against the State (Amendment) Act, 1998*

Commencement date: 12/6/2000

European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) (Amendment) Regulations 2000

Number: SI 144/2000

Contents note: Amend the *European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997* (SI 204/1997). Provide further in relation to the purchaser's option to have the timeshare contract drawn up in his/her language and in relation to provision by the vendor of a certified translation of the contract in the language where the timeshare property is situated. Introduces penalties for non-compliance with the provisions of the 1997 regulations and provides for related matters

Commencement date: 25/5/2000

Leg-implemented: Dir 94/47

Industrial Relations Act, 1990 *(Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order 2000*

Number: SI 146/2000

Contents note: Declares that the code of practice set out in the schedule to this order is a code of practice for the purposes of the *Industrial Relations Act, 1990*. The code of practice provides guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures. The code of practice set out in the schedule to the Industrial Relations Act, 1990 *(Code of Practice on Disciplinary Procedures (Declaration) Order 1996* (SI 117/1996) is revoked

Commencement date: 26/5/2000

Industrial Relations Act, 1990 *(Code of Practice on Voluntary Dispute Resolution) (Declaration) Order 2000*

Number: SI 145/2000

Contents note: Declares that the code of practice set out in the schedule to this order is a code of practice for the purposes of the *Industrial Relations Act, 1990*. The code of practice provides a recognised framework for the processing of disputes arising in situations where negotiating arrangements are not in place and where collective bargaining fails to take place

Commencement date: 26/5/2000

National Beef Assurance Scheme Act, 2000 *(Commencement) Order 2000*

Number: SI 130/2000

Contents note: Appoints 29/5/2000 as the commencement date for part V of the *National Beef Assurance Scheme Act, 2000*. Part V provides for an increase of penalties under the *Diseases of Animals Act, 1966*, the *Livestock Marts Act, 1967* and the *Slaughter of Animals Act, 1935*. Part V also amends the provisions relating to the refusal or revocation of licences under the *Livestock Marts Act, 1967*

National Disability Authority Act, 1999 *(Establishment Day) Order 2000*

Number: SI 162/2000

Contents note: Appoints 12/6/2000 as the date on which the National Disability Authority shall be established

Prepared by Law Society Library

Correction to *Finance Act, 2000* which appeared in *Legislation update* last month

Finance Act, 2000

Number: 3/2000

Contents note: Charges and imposes certain duties of customs and inland revenues (including excise); amends the law relating to customs and inland revenue (including excise); and makes further provision in connection with finance

Date enacted: 23/3/2000

Commencement date: 6/4/2000 for part I (ss1-89) except where otherwise expressly provided (per s166(9) of the act); 23/3/2000 for part III (ss107-124) except for ss107, 121 and 123(a) and 123(b) which shall be deemed to have come into force and take effect as and from 1/7/1999 and ss111 and 113 which shall be deemed to have come into force and take effect as and from 1/3/2000 (per s166(10)(a), (b) and (c) of the act). Various commencement dates for other sections – see act

Personal injury judgments

Occupier's liability – *Control of Dogs Act, 1995* – licensee – cider-drinking people with a dog on church grounds – horrific attack by dog on man – whether church authorities liable

CASE

***Kevin Leahy v Liam Leader and Cork Diocesan Trustees*, High Court on circuit in Cork, before Mr Justice Brian McCracken, judgment of 13 October 1999.**

THE FACTS

On 18 July 1994, shortly after 9pm, Kevin Leahy made a purchase at the Esso filling station opposite St Patrick's Church in the Lower Glanmire Road, Cork. He was returning to his flat in Summerhill and took a short cut through the grounds of the local church and up to the steps at the rear of the church. The church gates, both at the front of the church and the top of the steps, were kept open at all times. It would appear that the church authorities had made a deliberate decision that the church gates would remain open to the public at all times.

On the summer's evening in question, there was a group of people sitting at the side of the church near the steps up to Summerhill. Some of them were drinking cider, but they did not appear in any way threatening in themselves. One of the group had a dog, described as a Lassie-type collie. Without provocation from Mr Leahy, the dog attacked him and bit off a large part of his nose. It was a horrific injury. As a result, Mr Leahy's nose had to be rebuilt and after the rebuilding surgery there was still significant cosmetic damage. Mr Leahy issued proceedings against Father Liam Leader, the parish priest, and the owners of the church, the Cork Diocesan Trustees. His claim was based on two grounds. First, there was a claim based on occupier's liability and, second, a claim under the *Control of Dogs Acts, 1995*.

THE JUDGMENT

Mr Justice McCracken stated that this was a most unfortunate case in which Kevin Leahy suffered a horrific injury. There could be no blame whatever attached to him. The judge also noted that there was no dispute as to what had happened in the case. The judge referred to the two grounds of Mr Leahy's case, occupier's liability and liability under the *Control of Dogs Act, 1995*.

In relation to occupier's liability, the judge noted that the unfortunate incident took place before the coming into force of the *Occupier's Liability Act, 1995* and, therefore, the case was governed by the common law as to liability. Mr Leahy was undoubtedly a licensee; he was permitted by Fr Leader to use the short cut, as was anyone else in the vicinity. The obligations of Fr Leader and the diocesan trustees to a licensee were to warn them of any concealed danger and not to mislead them or to lay any trap for them. That was the extent of their liability.

The judge noted the submission that in this case there was a concealed danger. The judge observed that some might consider that people drinking cider might constitute a danger and there had been evidence from the manager of a local service station that he was worried about people congregating at the site of the church near the steps because he was afraid they might be spying on his shop, perhaps for the wrong purposes. The judge noted that although people did from time to time assemble in the church grounds and drink there, he considered that this had probably happened before as well as after this incident, and there had never been any violence connected with these people, either before or since. The judge did not consider that these people in themselves were actually a danger to anybody. The judge had ascertained from the Garda Síochána that there were no drugs involved. These people were perhaps out of work, perhaps out of homes, and they were not people who constituted any danger to anybody. In any event, Mr Leahy was not injured by any of these people directly.

Counsel for Mr Leahy had argued that the dog was a hidden or concealed danger. The judge considered in the first instance that the dog was not hidden or concealed. The dog was perfectly obvious to anybody. The dog was not a rottweiler or a dog of that nature, because such a dog would obviously be a dangerous dog. Counsel argued that a collie-type dog was a danger which would not be perceived, and therefore constituted a hidden danger. The judge considered that argument did not stand up to scrutiny: in one sense, the presence of any dog was a danger. Any dog may attack somebody and bite them, and indeed some of the smaller dogs are known to be the most vicious.

In relation to the argument on the *Control of Dogs Act, 1995*, section 21 of that act provided that the owner of a dog should be liable for damage caused as a result of an attack on any person by the dog or by any injury done to any livestock. It is not necessary to show that there was any knowledge of what is called a mischievous propensity on the part of the dog. The judge noted that in the legislation there was absolute liability for a dog and that was a new concept, but who was the owner of the dog? The act provided that an owner in relation to a dog included the occupier of any premises where the dog was kept or permitted to live or remain at any particular time, unless its occupier proved to the contrary. The argument

put forward by Mr Leahy was that this dog was permitted to remain on the church premises. Fr Leader was obviously the occupier of the premises.

In the context of the *Control of Dogs Act, 1995*, and the issue of the definition of an owner including the occupier of any premises where the dog is kept or permitted to live or remain, the judge noted the word 'permitted' must imply consent of some form, and that consent, in turn, implied knowledge.

According to the judge, the parish priest, Fr Leader, certainly did not know that this dog was there. While it was an open question as to how far Fr Leader was aware that people congregated there, even if he did know that they congregated at that location, he did not know they had congregated there with their dog. The judge was satisfied that the parish priest did not know the dog was there, so could not be said to have permitted it to remain there. On the night in question, the judge considered Fr Leader was quite unaware that anybody was there. In any event, the definition of owner of a dog in the act contains the proviso that the occupier may prove to the contrary. The judge was quite satisfied from Fr Leader's own evidence that he didn't know the dog was there and the judge was satisfied that the proviso in the act applied. Fr Leader did not permit the dog to remain there and, accordingly, the judge did not consider that Mr Leahy had any cause of action.

The judge considered the injury of Mr Leahy was terrible in nature and that there had been 'a most unfortunate accident', but noted that our law does not allow for the general principle that just because somebody is injured, such a person must be compensated and there had to be a blame-worthy party. The judge was satisfied that no blame could attach to Fr Leader or to the church authorities. Accordingly, he was compelled to dismiss Mr Leahy's action.

Counsel for the parish priest and the trustees then addressed the court, stating that he would like to express regret that this accident happened on church grounds. In those circumstances, counsel sought costs in the event of an appeal, but would not seek costs if the matter was not taken any further. Mr Justice McCracken stated that, in the circumstances, he didn't like making such an order on the spur of the moment, and the legal team for Mr Leahy would have to take instructions.

Counsel for Mr Leahy stated that he had no instructions. He appreciated what counsel for the church authorities had said. Counsel for the church authorities considered that he might go a bit further. The judge said that he was quite sure that Fr Leader was not going to seek costs personally. Counsel replied: 'Of course not'. Counsel for Mr Leahy asked the judge to exercise his discretion. Counsel for the church authorities then stated that he had taken instructions and the instructions were not to look for any costs. The judge made the appropriate order.

Counsel for Mr Leahy: Mr McCullough SC, Mr O'Mahony SC and Mr Hughes BL, instructed by Vincent Toher & Co, Solicitors.
Counsel for the church authorities: Mr Gleeson SC and Mr McCarthy BL, instructed by Barry Galvin, Solicitor.

Negligence – road traffic accident – physical injuries – short stay in hospital – injuries cleared up, but certain *sequelae* – assessment

CASE

***Pamela O'Hara v Abraham Neacey*, High Court on circuit in Sligo (sitting in Carrick-on-Shannon), before Mr Justice Paul Carney, judgment of 3 November 1999.**

THE FACTS

Pamela O'Hara, the driver of a motor car, was involved in a head-on collision with another vehicle driven by Abraham Neacey. She was trapped in her car. She thought she saw smoke, but it could have been steam. She believed at the time that the car was going to explode. She succeeded in climbing out the window. She had difficulty in breathing and was taken to Castlebar Hospital where she was retained for a week.

Ms O'Hara fractured her chest bone and there was pressure on the heart and kidneys, and cuts on her face; she suffered from headaches and a whiplash injury gave her pain and stiffness in the neck. She was x-rayed and treated with pain killers. There was blood in her urine and she had concern in relation to her heart and kidneys. She underwent extensive physiotherapy which helped her with her problems, but tasks like hoovering were difficult for her.

Evidence was given that Ms O'Hara's neck was sore and tired after long periods at a computer and she had chest difficulties after certain movements. She had previously engaged in aerobics, but those exercises would appear to be severely curtailed. In evidence, she agreed in cross-examination that after three months she had made extremely good progress but she still had some on-going difficulties. The matter came before Mr Justice Carney for assessment.

THE JUDGMENT

Mr Justice Carney stated that he had given very careful consideration to Ms O'Hara's injuries.

In one view, this could be regarded as a minor case, in that Ms O'Hara had spent a very short time in hospital, was back at work in a few weeks and her injuries had substantially cleared up in a period of three months.

However, the judge did not consider the matter was quite that simple. He considered that the impact was severe and that she apprehended her death at the time of the accident.

The judge noted that she was back at work in a remarkably quick time of three weeks because she felt a compulsion to get back to work. The judge noted, however, that in relation to travelling, Ms O'Hara could not turn her neck fully when it was necessary to get a side view. Aerobic exercises were not possible as previously and he noted that Ms O'Hara had difficulty in certain areas of housework.

The judge referred to evidence that improvement would reach a plateau and that Ms O'Hara had probably reached that position now.

Her recovery had been remarkably rapid, but she still had some on-going disadvantages which the judge considered would probably affect her for the rest of her life. Ms O'Hara deserved great credit, according to the judge, for her determination to get back to work as quickly as she did, but that should not affect the issue of damages.

THE AWARD

Mr Justice Carney awarded general damages of £35,000 and special damages of £2,000, giving a decree for £37,000 with costs.

Counsel for Ms O'Hara: Harry Whelehan SC and John Kiely BL, instructed by John J Gordon, Solicitor.
Counsel for the defence: Mr O'Hagan SC and John Shortt, instructed by Bourke Carrig and Loftus, Solicitors.

Employer and employee – former member of defence forces – complaints of difficulty in hearing – whether claim statute barred – whether state liable

CASE

***Seamus O'Brien v the Minister for Defence, Ireland and the Attorney General*, High Court on circuit in Kilkenny, before Mr Justice Philip O'Sullivan, judgment of 23 November 1999.**

THE FACTS

Seamus O'Brien had left the army over three decades ago. He complained of headaches and pressure in his head, which appeared to have arisen in the 1990s. The first time he presented himself in London to doctors, no hearing test was done. However, a medical report of 15 June 1999 done by a Dr O'Meara stated that the audiometry showed a bilateral deafness affecting some of the low tones and speech frequency, as well as the high tones. It was submitted that the hearing loss was worse on the left side. Medical opinion was that the inner-ear deafness was a result of exposure to the high explosive noise of gunfire.

Seamus O'Brien sued Ireland's minister for defence and the attorney general. Initial issues arose as to whether his claim was statute barred.

THE JUDGMENT

Mr Justice O'Sullivan considered that the first issue he had to decide was whether Mr O'Brien's claim was statute barred. On reviewing the evidence, he accepted that Mr O'Brien could not reasonably have known of his cause of action prior to March 1998. Accordingly, he considered the proceedings were issued in time.

The judge referred to the complaints made by Mr O'Brien of headaches and pressure. Mr O'Brien was surprised when he was informed by a medical specialist in March 1998 that he needed a hearing aid. He now has a hearing aid and has survived well since then. The judge noted there was no question of tinnitus in the case. He observed in the witness box that Mr O'Brien did appear to have difficulty in various exchanges in cross-examination with counsel for the state authorities. However, the judge accepted that most of these difficulties arose more out of a failure of understanding than of hearing. Yet the judge referred to this issue as supporting his impression that Mr O'Brien did not have a great difficulty in hearing. The judge considered that Mr O'Brien was not overplaying his case, and that was to his credit.

THE AWARD

The judge referred to the *Green book* regime. Taking everything into consideration, he awarded £15,000 to Seamus O'Brien.

Counsel for Mr O'Brien sought Circuit Court costs and a certificate for senior counsel. After some argument, the judge said that he was disposed to making such an order.

Counsel for Mr O'Brien: Aidan Walsh SC, Patrick McCarthy SC and Stephen Lanigan-O'Keefe BL, instructed by Anthony Carroll, Solicitor.
Counsel for state authorities: Sean Ryan SC and Tom Teehan BL, in-structed by the chief state solicitor. G

These judgments were summarised by Dr Eamonn Hall from Reports of personal injury judgments *from Doyle Court Reporters, 2 Arran Quay, Dublin 7.*

First Law Update

ELECTRON C PUBL SH NG

News from Ireland's on-line legal awareness service
Compiled by John X Kelly of FirstLaw

CONSTITUTIONAL

Immigration and nationality

Applicant proposed to undertake course of study – not in possession of valid employment permit – whether applicant possessed valid airline ticket – whether powers possessed by immigration officer ultra vires – *whether decision to deport applicant unreasonable* – Aliens (Amendment) Order 1975 – Aliens Order 1946 – Aliens Act, 1935

The applicant had attempted to enter the country, having landed at Dublin airport. The immigration official was not satisfied with the applicant's *bona fides* and refused him permission to land. The applicant was subsequently detained pending deportation. The applicant brought judicial review proceedings seeking an order of *certiorari* in respect of the order of deportation and damages for wrongful detention. Murphy J held that the applicant had not showed that the decision to deport him was unreasonable and accordingly refused all reliefs sought.

***Kanaya v Minister*, High Court, Mr Justice Murphy, 21/03/2000** [FL2680]

CRIMINAL

Provocation

Murder – conviction – appeal – whether test to be applied regarding provocation objective or subjective – whether charge by trial judge to jury was correct

The applicant had been convicted on a charge of murder and appealed against the conviction. The applicant argued that the trial judge had wrongly incorporated an objective element into the test for provocation, claiming that the true test was in fact a completely subjective one. In this regard, it was argued that there had been a change in the law as had been previously stated in the case of *Director of Public Prosecutions v Eoin* ([1978] IR 27). The court held that the test for provocation had in recent years been refined somewhat and as a result the conviction would be quashed and a new trial ordered.

***DPP v Heaney*, Court of Criminal Appeal, 17/01/2000** [FL2713]

Prejudicial evidence

Right to privacy – mens rea – *harassment – conviction – appropriate penalty – defences – reasonable excuse – whether sentence imposed appropriate – whether charge of trial judge correct – whether evidence admitted prejudiced accused* – Non-Fatal Offences against the Person Act, 1997, *section 10*

The appellant had been convicted of an offence under section 10 of the *Non-Fatal Offences against the Person Act, 1997*. The offence was a relatively new one and the appellant was sentenced to three years' imprisonment. A number of difficulties had arisen in the case, including the appellant's lack of English, his lack of understanding of legal proceedings and the admission of allegedly prejudicial evidence which had occurred prior to the enactment of the relevant statute. In addition, it was alleged that certain relevant defences were not put to the jury. In the circumstances, the court was satisfied that the trial was unsatisfactory, the conviction would be quashed and a re-trial would not be ordered. Certain orders in relation to the *Non-Fatal Offences against the Person Act, 1997* would, however, be made restraining the appellant.

***DPP v Ramachchandran*, Court of Criminal Appeal, 27/01/2000** [FL2762]

Visual identification

Fraud charges – documentary evidence – video evidence – formal identification parade – whether charge of trial judge in relation to visual identification evidence correct – whether evidence of gardaí properly admitted – whether admission of rebuttal evidence prejudiced defence of accused

The applicant had been charged with a number of fraud offences, had been convicted and sought leave to appeal. On behalf of the applicant, it was argued that the charge in relation to the visual identification evidence was incorrect. In addition, complaints were made both in regard to the admission of certain video evidence and also in regard to rebuttal evidence which was allegedly improperly admitted and had, it was claimed, prejudiced the defence of the accused. The court rejected the arguments advanced on behalf of the accused. The trial judge had charged the jury correctly regarding the visual identification evidence in question. The rebuttal evidence had also been properly admitted.

***DPP v Leahy*, Court of Criminal Appeal, 14/02/2000** [FL2748]

Evidence and sexual offences

Sexual assault – leave to appeal against conviction – whether verdict of jury was against weight of evidence – whether trial judge erred in refusing application that prosecutrix be recalled for cross-examination – whether trial judge erred in not discharging jury – whether trial judge wrongly refused to warn jury of danger in convicting applicant in absence of corroboration – whether corroboration warning mandatory – Criminal Law (Rape) (Amendment) Act, 1990, *sections 2, 7*

A jury at Sligo Circuit Court convicted the applicant on four counts of sexual assault on a 15-year-old girl. The applicant was sentenced to two years' imprisonment on each count, the sentences to run concurrently. In his application for leave to appeal against conviction, it was contended that the trial judge wrongly refused to give the jury a warning regarding the lack of corroborating evidence. In addition, it was contended that the trial judge wrongly refused the application of counsel for the applicant that the prosecutrix be recalled to be cross-examined. The court refused the application and held that section 7 of the *Criminal Law (Rape) (Amendment) Act, 1990* did not make the corroboration warning mandatory in all cases. The issuing of such a warning was at the discretion the trial judge after having considered all the evidence. The trial judge did not err in principle or fail to balance fairly the rights of the applicant in refusing to recall the prosecutrix to be cross-examined on matters requested by counsel for the applicant.

***DPP v JEM*, Court of Criminal Appeal, 01/02/2000** [FL2694]

Incriminating statement

Sexual assault and rape – leave to appeal against conviction and sentence – whether applicant in fit state to be interviewed by gardaí – whether statement admissible – whether questioned by excessive number of gardaí – whether breach of custody regulation – factors in considering appropriateness of sentence – Treatment of Persons in Custody in Garda Síochána

Stations Regulations 1987

The appellant was convicted and sentenced to four years' imprisonment on one count of sexual assault and to 12 years' imprisonment on two counts of rape. He sought liberty to appeal against conviction and sentence, contending that an incriminating statement he had made while in garda custody was in breach of the *Treatment of Persons in Custody in Garda Síochána Stations Regulations 1987* and should not have been admitted in evidence. In refusing leave to appeal against conviction, the court held that the regulation should be construed as providing that during the course of an interview while those present remained the same only two members of the gardaí may actually question the suspect. Although breach of this regulation had occurred, it had not affected the taking of the admitted statement, no questions having been asked at that stage. The trial judge had, however, failed to give adequate consideration to the applicant's mental disorder and the last six years of the 12 years' imprisonment would be suspended on terms.

***DPP v Smith*, Court of Criminal Appeal, 22/11/99** [FL2710]

Practice and procedure

Murder – provocation – trial judge's charge to jury – subjective test – use of excessive force in relation to provocation – wording of precedent judgment – whether jury received inconsistent messages from trial judge's charge – comparisons between defences of self-defence and provocation – burden of proof – guidance to trial judge as to principles to be applied

The applicant had been convicted of murder and was granted a certificate of leave to appeal by the trial judge. During the trial, the judge ruled there was sufficient evidence of provocation on the state's case to allow the plea to go to the jury. Counsel for the applicant submitted that passages cited by the trial judge to the jury still retained traces of the objective test and tended to contradict the trial judge's statement that the test was a subjective one. In this regard, the judge had charged the jury in accordance with the principles laid down in cases such as *The People (DPP) v MacEoin* ([1978] IR 27). In quashing the conviction, the court ordered a retrial and said that although a trial judge in dealing with a plea of provocation should follow the *MacEoin* case, the judge may not find it necessary, or helpful to the jury, to quote from it. There was a danger that the jury in this instance may have received inconsistent messages from the judge's charge.

***DPP v Kelly*, Court of Criminal Appeal, 21/07/99** [FL2561]

Unsafe conviction

Murder – guilty – majority verdict – whether conviction unsafe – trial judge's charge to jury – whether onus of proof on defence – presumption that person is presumed to intend natural and probable consequences of conduct – preferable formula – whether erroneous directions likely to have weighed more heavily in jury's mind than redirection – whether trial judge entitled to reject concept of moral certitude as appropriate standard of proof – whether verdict of not guilty simpliciter *should have been left to jury*

On 24 October 1996, a jury in the Central Criminal Court convicted the applicant by a majority verdict of the murder of her husband on 3 January 1996 at their home. The present application was treated as the hearing of the appeal. The applicant contended that the trial judge erred in telling the jury that there was an onus on the accused to satisfy the jury on the balance of probabilities as to the truth of her evidence and that she did not intend the natural and probable consequences of her acts. The court held that the trial judge erred in imposing an onus of proof on the applicant. These erroneous directions were likely to have weighed more heavily in the jury's mind than the redirection subsequently given. The conviction was therefore unsafe, would be quashed and a retrial ordered.

***DPP v Cotter*, Court of Criminal Appeal, 28/06/99** [FL2624]

Review of sentence

Aggravated sexual assault – false imprisonment – assault – guilty plea – whether sentence unduly lenient – whether sentence reflected gravity of offences – previous rape conviction – Criminal Justice Act, 1984, *section 4* – Criminal Justice Act, 1993, *section 2*

The respondent had pleaded guilty to a number of offences and was sentenced by the Central Criminal Court to nine years' imprisonment in respect of three counts of aggravated sexual assault and three years' imprisonment in respect of 12 other counts, including false imprisonment and robbery, the sentences to run concurrently. The final year of each sentence was suspended. The DPP brought an application under section 2 of the *Criminal Justice Act, 1993* to have the sentences reviewed on the grounds that they were unduly lenient. The Court of Criminal Appeal granted the application. A sentence of nine years did not reflect the gravity of the entirely separate offences of aggravated sexual assault and false imprisonment. In addition, the respondent had been convicted of rape on a previous occasion and had received a sentence of six years' imprisonment. A probation officer had also assessed the respondent as 'a very disturbed and dangerous man'. The sentence was unduly lenient, would be quashed and a sentence of 12 years would be imposed in its place.

***DPP v Melia*, Court of Criminal Appeal, 29/11/99** [FL2693]

Sentencing

Allegations that jury had been misled – rape – sexual assault – intervention of chief complainant – evidence – whether complainant had deceived jury – whether conviction unsafe – whether verdict of jury unsafe

The applicant had been convicted in respect of a number of sexual offences and received both a seven years' and a two years' sentence. As a result of an intervention by the chief complainant, the sentence of seven years was altered to two years with the balance suspended. The present application had been brought as a result of a conversation which allegedly took place between the complainant, the accused and two of his friends on the morning the sentencing took place. Evidence was given by three witnesses who themselves inferred from the conversation that the complainant had deceived the jury. The court could not at this point decide who was in fact telling the truth. However, the safest course of action would be to grant leave to appeal, set aside the verdict of the jury and order a retrial.

***DPP v Murphy*, Court of Criminal Appeal, 19/07/99** [FL2764]

Double jeopardy

Rape – buggery – second trial – same trial judge – conviction on rape charges – double jeopardy – bill of indictment differed from earlier trial – evidence of injured party – whether verdict perverse, inconsistent and against weight of evidence

The applicant claimed that the trial judge had erred in permitting the respondent to substitute a new bill of indictment against him which differed from that preferred against him at an earlier trial at which the jury had failed to agree on a verdict in relation to certain charges. The court held that provided the new counts were founded on the documents and exhibits considered by the district judge at the preliminary examination, no injustice was done to him by the substitution of the new bill of indictment. In addition, the adduction of additional evidence in the form of a statement by the complainant made to gardaí after the earlier trial was not unfair to the applicant since the respondent was entitled to serve it under section 11(1) of the *Criminal Procedure Act, 1967*. The Court of Criminal

Appeal so held in dismissing the appeal.

***DPP v Moylan*, Court of Criminal Appeal, 19/05/99** [FL2587]

Admissibility of evidence

Rape – sexual assault – judges' rules – conviction – leave to appeal refused – whether leave should be granted – whether trial judge erred in admitting evidence of doctor – Criminal Law (Rape) Act, 1981 – Criminal Law (Rape) (Amendment) Act, 1990 – Criminal Justice (Forensic Evidence) Act, 1990

The applicant claimed that the trial judge had erred in law and on the facts in admitting the evidence of a doctor concerning the injuries which he observed on the lip of the accused while in garda custody. The court was satisfied that the doctor would have been entitled to give evidence of his observations in the course of his first examination when he was taking the samples authorised by the *Criminal Justice (Forensic Evidence) Act, 1990*. The applicant contended that he was not cautioned by the doctor or the gardaí as to the consequences of a second examination by the doctor or the use which might be made of any information obtained as a result of it. The Court of Criminal Appeal rejected the argument that the examination constituted an intrusion of the applicant's constitutional right to privacy. The trial judge did not err in exercising his discretion to admit evidence of the disputed examination. The Court of Criminal Appeal so held in refusing the application for leave to appeal.

***DPP v Murray*, Court of Criminal Appeal, 12/04/99** [FL2763]

EMPLOYMENT

Suspension of employment

Fair procedures – disciplinary action – civil service procedures – judicial review – audi alteram partem – nemo iudex in sua causa – *whether suspensions unwarranted and unlawful – whether respondent had acted* ultra vires – *whether suspension warranted warning – whether normal rules of natural justice applied – whether constitutional right to earn livelihood interfered with* – Civil Service Regulation Act, 1956, *sections 1, 3, 13, 14*

The applicants had been suspended from employment pending a full investigation into allegations of misconduct. The applicants initiated judicial review proceedings in the High Court, claiming that insufficient details had been furnished to them in respect of the allegations and that the suspensions should be quashed. O'Higgins J granted the relief sought, holding that there had been a denial of fair procedures and that the purported suspensions were invalid. The respondent appealed. Keane CJ, in delivering the judgment of the court, held that the applicants had been afforded the opportunity to make representations. The conclusions reached by the High Court judge that there had been a denial of fair procedures were not justified. Accordingly, the appeal of the respondent would be allowed and the applicants' claim would be dismissed.

***Gavin v Minister for Finance*, Supreme Court, 12/04/2000** [FL2728]

EQUITY AND TRUSTS

Landlord and tenant

Directions to trustee – settlement – contract for the sale of land – obligations of trustee to beneficiaries – whether court in position to give directions regarding obligations of trustees – Central Bank Act, 1971 – Landlord and Tenant (Ground Rents) (No 2) Act, 1978 – Landlord and Tenant (Amendment) Act, 1984 – Trustee Act 1893

The respondent objected to the sale of premises held under a trust. The respondent was a beneficiary under the said trust. The premises had been valued in accordance with the provisions of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*. The respondent claimed that this method of valuation was incorrect and the purported sale would be a breach of the terms of the trust. The applicant bank sought directions from the High Court as to whether they should proceed with the proposed sale. The High Court declined to answer the questions posed and the applicant appealed. The Supreme Court held that the issues involved were matters which fell to be determined by the vendor and purchaser and were not for the court to address. Accordingly, the appeal was dismissed.

***Bank of Ireland v Gleeson*, Supreme Court, 06/04/2000** [FL2653]

FAMILY LAW

Maintenance payments

Appeal against amount of maintenance – dependant child – lump sum order – income of respondent – disclosure of assets – financial position of parties – whether court should amend original orders – Family Law Act, 1945, *section 42*

Orders relating to the payment of maintenance were made in the instant case on 15 October 1999 in the Circuit Court. The respondent appealed in relation to the amount of maintenance made payable in respect of the eldest son, whom the respondent claimed was no longer a dependant child within the meaning of the relevant legislation. The respondent also appealed in relation to increases made in respect of the orders of maintenance payable to other children and also in relation to the payment of a lump sum to the applicant. The applicant cross-appealed in relation to the finding that regular maintenance should not be paid to her. O'Donovan held that the eldest son should not receive maintenance as he was no longer a dependant member of the family. However, the respondent should in some way contribute to the eldest son in an informal manner. O'Donovan J upheld the orders made in relation to the increased maintenance payable in respect of the other children and dismissed the cross-appeal by the applicant that no maintenance be paid personally to her. The court also allowed the appeal by the respondent in respect of the lump sum payment.

***MM v GM*, Circuit Court, Mr Justice O'Donovan, 25/11/99** [FL2177]

Separation agreement

Maintenance – costs – custody – earning potential of parties – guardianship – accommodation – order preventing development of site – interests of children – whether mother obliged to give up work to look after children

The parties in the action had not been married but had two children and subsequently had entered into a separation agreement. A dispute arose as to how the expenses of the children should be met. The applicant claimed that she had to give up work in order to look after the children and thus her earning potential was less. In addition, the applicant sought sole custody of the children. Differences had also arisen regarding the accommodation needs of the parties. Kinlen J ordered that the injunction obtained by the applicant over a site owned by the respondent be lifted. The respondent would undertake to build accommodation on the site which would accommodate the children. The parties would have joint custody of the children and they would jointly discharge the expenses of children. The court also made additional orders regarding incidental expenses of the children, such as holidays, health insurance and accommodation. The court also stated that, as such, the applicant and respondent owed no duty towards each other than joint parenting.

***EH v JM*, High Court, Mr Justice Kinlen, 04/04/2000** [FL2581]

Family law and mental health

Marriage – nullity – capacity to enter into normal marital relation-

ship – emotional state of petitioner – psychiatric evidence – role of court – appointed medical inspector – whether petitioner capable of giving full, free and informed consent to marriage ceremony – Marriages (Ireland) Act 1844

The petitioner sought a decree of nullity in relation to a marriage entered into with the respondent. The petitioner of claimed that by reason his emotional immaturity, mental state and personality, he had not the requisite capacity at the time of the marriage ceremony to enter into a normal marital relationship. Psychiatric evidence tendered to the court suggested that the petitioner had a personality disorder including a separation anxiety disorder. Murphy J was satisfied that the petitioner did not possess the emotional capacity to enter into a normal marital relationship with the respondent. Accordingly, the petitioner had not given a fully free or informed consent to marriage. The ceremony of marriage of the parties was therefore declared null and void and the petitioner declared free of all bonds of marriage with the respondent.

***GF v JB*, High Court, Mr Justice Murphy, 28/03/2000** [FL2667]

LAND LAW

Conveyancing

Landlord and tenant – breach of terms of lease – specific performance – service charges – misrepresentation – planning – right of access – whether defendants entitled to reside in property – whether defendants entitled to alter terms of contract – whether defendants obliged to provide residential nursing facilities – whether terms in brochure could override terms of care contract – Companies Act, 1990, *section 12(2)* – Registration of Title Act, 1964, *section 72*

The plaintiffs comprised of a number of residents of a retirement home complex. The complex had run into difficulties and had been taken over by the defendants. The defendants sought to manage the complex and instituted a number of changes to the original care contract. The plaintiffs brought proceedings claiming that the defendants had failed to honour their obligations as set out in the care contract. In addition, the plaintiffs contended that terms, as set out in an advertising brochure, had not been adhered to. The plaintiffs sought decrees of specific performance. The court rejected the claim of the plaintiffs, holding that the defendants were not obliged to provide residential nursing facilities. The defendants were entitled to vary the terms of the care contract. The plaintiffs could not be said to possess property rights to the main house of the complex and, as such, only had rights to receive care facilities in the main house. Accordingly, the claim was dismissed.

***Honiball v McGrath*, High Court, Mr Justice Kearns, 23/03/2000** [FL2564]

Landlord and tenant

Conveyancing – consent to assign lease – guarantor of lease required – landlord required guarantor to act as principal obligor and not merely as surety – use of guarantee set out in precedent book – whether form of guarantee sought by landlord unreasonable – whether landlord had unreasonably refused consent to assign lease

The court would consider all the relevant facts of the case in deciding whether it was reasonable for a landlord to demand that a guarantor of a lease be jointly and severally liable for the performance of covenants and conditions contained in the lease. The plaintiff had sought to assign the lease and the defendant had furnished a guarantee which it required to be signed by the guarantor of the new tenant. The plaintiff objected to the said guarantee, complaining that it was too onerous. The plaintiff subsequently brought proceedings, claiming that the defendant as landlord was unreasonably withholding its consent to an assignment of the lease. Judge John F Buckley held that in the present case such a guarantee was not suitable and declared that the landlord had accordingly unreasonably refused consent to the assignment of the lease.

***Gunne v Pembroke Estates*, Dublin Circuit Court, Judge Buckley, 15/05/2000** [FL2742]

LICENSING

Adjoining unlicensed premises

Existing licensed premises – statutory interpretation – objections – appeal – whether new licence could be granted in respect of existing premises and new premises – whether new premises 'attached or adjoining existing premises' – whether issue of new licence would render existing premises 'more suitable' for the carrying out of business – Licensing (Ireland) Act 1902 – Intoxicating Liquor Act, 1960 – Courts of Justice Act, 1936

The applicant had sought a publican's licence in respect of a premises, a portion of which was presently licensed and another portion which was unlicensed. The application was opposed by a number of objectors. In the Circuit Court, the application was refused and this refusal was appealed to the High Court. In the High Court, Kearns J posed a number of questions in the form of a consultative case stated for the Supreme Court. The main issue concerned whether the entire premises must form a single entity in order for the new licence to issue. Murphy J, in delivering the opinion of the court, held that the entire premises must be capable of forming one single unit for the purposes of licensing. In addition, the adjoining premises must be such that the premises currently licensed was rendered more suitable for the carrying out of business. The matter as answered would now fall to be determined by the High Court.

***Hannigan Holdings Ltd*, Supreme Court, 13/04/2000** [FL2729]

LOCAL GOVERNMENT

Planning

Leave to apply for judicial review – planning permission granted – whether leave to seek judicial review should have been granted – whether time limits in respect of judicial review complied with – whether orders made by local authority constituted planning decisions within meaning of Planning Acts

The applicant had applied for and had been granted leave to seek judicial review on an *ex parte* basis in respect of orders made by Dublin Corporation. Both the notice party and respondent contended that leave to seek judicial review should not have been granted and sought to have the leave to seek judicial review set aside. In this regard, the respondent and notice party contended that the orders in question were planning decisions and therefore that leave to seek judicial review must comply with the necessary time limits and must be made on notice. The applicant argued that the orders were in fact signifying agreement by the corporation to submissions made by the developers and were not planning decisions as such. Kelly J held that the orders in question did not appear to amount to planning decisions. Consequently, leave to seek judicial review had been properly granted and was not subject to the procedures set out in the *Local Government (Planning and Development) Act, 1992*. The application by the respondent and the notice party was dismissed.

***O'Connor v Borg Developments*, High Court, Mr Justice Kelly, 26/05/2000** [FL2775] G

The information contained here is taken from FirstLaw's Legal Current Awareness Service, published every day on the Internet at www.firstlaw.ie. *For more information, contact bartdaly@ firstlaw.ie or FirstLaw, Merchants Court, Merchants Quay, Dublin 8, tel: 01 679 0370, fax: 01 679 0057.*

Eurlegal

News from the EU and International Law Committee
Edited by TP Kennedy, director of education, Law Society of Ireland

Asylum policy: The European Union framework

This article outlines the elements of European Union asylum policy. It does not critically assess whether this policy is adequate, fair or effective or how asylum and refugee issues have been addressed in Ireland.

The following matters are discussed:

- the effect of the *Amsterdam treaty*
- milestones since the signing of the *Amsterdam treaty*
- developments in a number of key areas, and
- some core issues.

The *Amsterdam treaty*

The *Amsterdam treaty* was signed in October 1997 and entered into force on 1 May 1999. The legal basis for action in the areas of external border control, asylum, immigration and safeguarding the rights of third-country nationals has shifted from the *Maastricht treaty* inter-governmental framework to a Community framework. The relevant provisions are contained in a new Title IV in the *EC treaty* designed to progressively establish an area of freedom, security and justice (see articles 61 to 69 EC).

A number of features of the new *EC treaty* framework should be briefly mentioned:

- Ireland, the United Kingdom and Denmark have opted to stay wholly or partly outside the Title IV system. Ireland is ready to participate in Title IV to the maximum extent compatible with the common travel area. Ireland and the United Kingdom may each apply to opt in for some or all areas, and have already signalled their intentions to do so in parts of the asylum field
- Pending entry into force of new Community measures, existing common justice and home affairs (CJHA) measures taken under the *Maastricht treaty* – many characterised as 'soft law' – remain in force
- A time limit of five years for taking action applies for most areas, though not for 'burden sharing'
- The key institutional players are the council (as legislator) and the commission (as proposer and guardian of the treaty). Member states have, temporarily, a shared right of initiative. The European Parliament has less input into the decision-making process than might have been hoped. The Court of Justice enjoys, with certain qualifications, its usual powers of judicial review
- Article 66 EC requires the council to take measures ensuring co-operation between national administrations and between such administrations and the commission. There is a clear need for exchanging statistics and intelligence on migration and information on national legislation and administrative practices
- The need for maintaining relations with the UN and other organisations and agencies is recognised in articles 302 to 304 EC. A conference declaration states that consultations are to be established with the United Nations High Commission on Refugees (UNHCR) and other relevant international organisations on asylum policy matters
- The protocol on asylum for nationals of member states of the European Union provides that member states are to be regarded as safe countries of origin in respect of each other. The exceptions to the general rule are extremely strict.

Milestones since the *Amsterdam treaty*

A number of key developments since the signing of the *Amsterdam treaty* should be briefly identified.

Austrian presidency strategy paper

In July 1998, the Austrian presidency submitted its strategy paper on migration and asylum policy (see the Europa website, *http:/ue.eu.int/jai/article.asp?lang=en&id=89909809*). This provided a basis for a reassessment of European policy in the context of increased numbers of asylum-seekers, the problem of secondary movements, the giving of temporary protection and the relationship with immigration policy.

Council and commission action plan

At the December 1998 Vienna European Council, the council and commission presented an action plan on how best to implement the *Amsterdam treaty* provisions on the area of freedom, security and justice (see council press release no 13844/98).

The action plan emphasised that priority was to be given to ensuring the necessary protection for those in need of it, even if they did not fully meet the criteria of the *Geneva convention*.

In setting out the priorities for measures in the field of asylum, the action plan noted that:

- due account had to be taken of the difference between the areas of migration and asylum
- a system of European solidarity should figure prominently in an overall migration strategy
- the exchange of statistics and information on asylum and immigration should be improved.

The action plan set out the timetable for specific actions to be taken 'as quickly as possible', within two years of the *Amsterdam treaty*'s entry into force and within five years.

Report of the high-level group on asylum and migration

In December 1998, the high-level working group on asylum and migration was set up to establish a common, integrated, cross-pillar approach targeted at the situation in the most important countries of origin and transit of asylum-seekers and migrants. The final report of the high-level group and accompanying action plans designed to tackle the root causes of flight or migration in important source countries was submitted to the Tampere European council. (The final report is contained in the minutes of the justice home affairs (JHA) council meeting of 4 October 1999 [council press release no 11281/99]. For the accompanying action plans, see council documents 11424 to 11428/99.)

Tampere European council

The October 1999 Tampere European council was a special summit on the creation of an area of freedom, security and justice. The *Tampere milestones* included a concept of 'freedom' covering 'those whose circumstances lead them justifiably to seek access to our territory'. Common policies on asylum and immigration had to be based on principles clear to Union citizens

and had also to offer guarantees to those seeking protection in or access to the European Union. The aim was 'an open and secure European Union, fully committed to the obligations of the *Geneva refugee convention* and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity'. Finally, the area of freedom, security and justice had to be based on the principles of democracy and democratic control.

As far as asylum was concerned, the European Council:

- reaffirmed the importance attached to absolute respect of the right to seek asylum
- agreed to work towards establishing a common European asylum system (CEAS) based on the full and inclusive application of the *Geneva convention*
- set out the core short-term and long-term elements of the CEAS and gave political directions to the commission and the council.

Scoreboard

In March 2000, the commission issued a 'scoreboard' to review progress on the creation of an area of freedom, security and justice, soon given political endorsement by the JHA Council. (For the final English-language version, see Com 2000 167/final/2 [13 April 2000]; see also council press release 7100/00 [*Presse* 81].) The scoreboard promotes transparency, keeps up the momentum generated by the Tampere European council and exercises pressure where there is delay. It is as a 'rolling document' which is to be updated once under each presidency.

Developments in key areas

Article 63(1) EC requires the council to adopt, within five years after the entry into force of the *Amsterdam treaty*, measures on asylum within a number of specified areas, as set out below. Such measures are to be taken in accordance with the 1951 *Geneva convention*, the 1967 protocol and other relevant treaties.

Member state responsible for determining asylum applications

Article 63(1)(a) EC requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, 'criteria and mechanisms for determining which member state is responsible for considering an application for asylum submitted by a national of a third country in one of the member states'.

This matter is currently addressed by the 1990 *Dublin convention* and associated instruments (see the various decisions of the committee set up by article 18 of the *Dublin convention*).

The action plan called for work on the effectiveness of the *Dublin convention* to be undertaken within two years. The Tampere European council saw a clear and workable determination of the state responsible for examining asylum applications as a necessary element of the CEAS in the short term.

A regulation on the adoption of criteria and mechanisms in the area covered by the *Dublin convention* should be adopted by April 2001. The commission issued a working document in March 2000 (SEC[2000] 522 [31 March 2000]), and a proposal should be submitted by the end of this year.

Eurodac

The proposed Eurodac system is a Community-wide system for the comparison of fingerprints of asylum applicants, designed to facilitate the application of the *Dublin convention*.

The legal basis for such a measure is now article 63(1)(a) of the *EC treaty*. A draft text for a convention under Title VI of the *Maastricht treaty* was 'frozen' in December 1998. The rapid introduction of Eurodac was urged by the action plan and the Tampere European council. A commission proposal for a regulation was made in May 1999 (COM[1999] 260 final [26 May 1999]), and an amended proposal was tabled in March 2000 (COM[2000] 100 final [15 March 2000]).

Minimum standards on the reception of asylum-seekers

Article 63(1)(b) EC requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, minimum standards on the reception of asylum-seekers in member states.

A 1999 joint action – to apply until the end of 1999 – was adopted by the council in 1999 and was designed to enable practical support for the reception and voluntary repatriation of refugees and others (OJ 1999 L114/2).

The Tampere European council saw common minimum conditions of reception as a necessary element of the CEAS in the short term. The commission is preparing a preliminary study and a proposed directive will be submitted at the beginning of 2001, with a view to adoption by April 2001.

Minimum standards with respect to the qualification of third country nationals as refugees

This matter is currently addressed by a series of council conclusions and resolutions: (a) the 1992 *London resolutions* on manifestly unfounded applications for asylum and on a harmonised approach to questions concerning host third countries (see council press release 10518/92); and (b) the 1996 council joint position on the harmonised application of the definition of the term refugee in article 1 of the *Geneva convention* (OJ 1996 L63/2).

Article 63(1)(c) EC requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, measures on minimum standards.

The Tampere European council saw the approximation of rules on the recognition and content of refugee status as a necessary element of the CEAS in the short term. The council was urged to adopt, on the basis of commission proposals, the necessary decisions in accordance with the *Amsterdam*/action plan timetable by April 2004.

Minimum standards on procedures in member states for granting or withdrawing refugee status

Article 63(1)(d) EC requires the council to adopt, within five years of the *Amsterdam treaty*'s entry into force, measures on minimum standards on procedures in member states for granting or withdrawing refugee status.

A 1995 council resolution addresses minimum guarantees for asylum procedures (OJ 1996 C274/13). A 1997 council resolution on unaccompanied minors who are nationals of third countries contains specific provisions on asylum procedures (OJ 1997 C221/23). The 1999 joint action covers measures 'to support asylum procedures which are fair, efficient and accessible to persons in need of international protection'.

The action plan called for the adoption of such measures, with a view to reducing the duration of asylum procedures, within two years after the entry into force of the *Amsterdam treaty*.

A working document on common standards in asylum procedures was tabled by the commission in March 1999 (SEC [1999] 271 final) and transmitted to the European Parliament for its opinion. The Tampere European council saw common standards on procedures as a necessary element of the CEAS in the short term. The necessary measures should be taken in accordance with the *Amsterdam*/action plan timetable, that is, by April 2001.

Single/common European asylum procedure

The action plan called for a study to establish the merits of a single European asylum procedure within two years of the entry into force of the *Amsterdam treaty*.

The Tampere European council considered that, in the longer term, there should be a common asylum procedure. The commission was asked to prepare a communication on this within one year.

Article 63(2) of the *EC treaty* requires the council to adopt, within a period of five years after

the entry into force of the *Amsterdam treaty*, measures on refugees and displaced persons within a number of specified areas, as set out below.

Minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their countries of origin

The 1999 joint action contains provisions on the reception and voluntary repatriation of displaced persons. Article 63(2)(a) EC requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, measures on minimum standards for giving temporary protection.

The Tampere European council urged the council to step up its efforts and invited the commission to explore the possibilities of making some form of financial reserve available in situations of mass influx of refugees. A commission proposal was adopted on 24 May 2000 (IP/00/518).

Minimum standards for complementary/subsidiary protection for persons in need of international protection

Article 63(2)(a) EC also requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, measures on minimum standards for giving protection to 'persons who otherwise need international protection'.

The Tampere European council saw such measures as a necessary element of the CEAS to be achieved in the short term. The council was urged to adopt the necessary decisions in accordance with the *Amsterdam*/action plan timetable, that is, by April 2004.

Solidarity or burden sharing

The question of burden sharing with regard to the admission and residence of displaced persons on a temporary basis was addressed in the mid-1990s by the council, primarily to deal with potential crises stemming from the conflict in the former Yugoslavia. A 1995 council resolution concerned burden sharing with regard to the admission and residence of displaced persons on a temporary basis (OJ 1995 C262/1). A 1996 council decision introduced an alert and emergency procedure for burden sharing with regard to the admission and residence of displaced persons on a temporary basis (OJ 1996 L63/10).

The 1999 joint action contains provisions on Community financial support for projects in relation to reception and voluntary repatriation, as well as emergency assistance in relation to refugees from Kosovo.

Article 63(2)(b) EC requires the council to adopt, within five years of the entry into force of the *Amsterdam treaty*, measures on promoting a balance of effort between member states in receiving and bearing the consequences of receiving refugees and displaced persons.

A commission proposal on setting up a European refugee fund was tabled on 14 December 1999 and adoption is likely in the near future (COM[1999] 686 final).

Other areas of activity are not specifically addressed in the *EU treaties*, but have been introduced by the council.

Uniform status for those granted asylum

In January 1999, the commission made a proposal for a council decision based on article 235 of the *EC treaty* (new article 308 of the *EC treaty*) establishing a Community action programme to promote the integration of refugees (COM[98] 731 final).

The Tampere European council considered that, in the longer term, Community rules should lead to a uniform status for those granted asylum valid throughout the Union. The commission was asked to prepare a communication on this within one year.

The commission has indicated that, as a follow-up to the forthcoming communication, a legislative instrument may be needed.

Secondary movements

The action plan called for action to limit 'secondary movements' by asylum-seekers between member states, to be taken within two years of the entry into force of the *Amsterdam treaty*.

Partnerships with countries of origin/countries of transit

The recognition that unwanted migration is a problem that needs to be dealt with at the source is central to EU migration and asylum policy.

A country/region-specific approach was taken in an action plan adopted by the council in January 1998 in relation to the influx of migrants from Iraq and the neighbouring region.

The 1998 action plan called for an assessment of countries of origin in order to formulate country-specific integrated approaches within a two-year time-frame. The final report of the high-level group and accompanying action plans designed to tackle the root causes of flight or migration in important source countries was submitted to the Tampere European council.

The council stated the need for a comprehensive approach to migration, addressing political, human rights and development issues in countries and regions of origin and transit. The high-level group's mandate was continued and it was to draw up further action plans. The council and commission were to report back to the European council on the implementation of the first action plans in December 2000. New action plans are to be adopted by April 2001.

Some core issues

By way of conclusion, some core issues relating to asylum policy in the EU may be identified.

The relationship between the EU (including the EC) and the individual member states

The principle of subsidiarity, the subject matter and the close link with critical questions of state security and 'self-definition' suggest that Community legislation should not be too intrusive. The reference to minimum standards in the relevant treaty provisions supports this view. Nonetheless, there is acceptance of the need for a common asylum procedure and a uniform status for refugees in the context of the common European asylum system. Issues of competence need to be sensitively addressed.

Freedom and security

The treaty concepts of 'freedom' and 'security' can become polarised. The freedom which asylum-seekers and others hope to enjoy may be counterbalanced, if not outweighed, by a desire for security by member state nationals. Expressing concerns about national self-identity need not be seen as racist or xenophobic. Recent and not-so-recent European history suggests that there is a fine line to be drawn in all member states between acceptable and unacceptable manifestations of national sentiment.

Fundamental rights

The Tampere European council recognised the importance which the forthcoming *EU charter of fundamental rights* would have to the creation and operation of the area of freedom, security and justice. It is not clear if and how the charter will specifically cover asylum- and other protection-seekers.

There have been suggestions that, outside the strict scope of the *Geneva convention*, asylum should be seen not as a subjective, individual right but as an 'institutional response' by the recipient state. The introduction of a targeted rights regime does not, in itself, mean giving uncontrolled rights of entry and residence. It could serve to demonstrate the essential commitment of the European Union to protect those in need and to recognise their essential dignity.

Transparency

In the complex, multi-faceted democratic polity that is evolving in Europe, the utmost transparency is a fundamental and essential basis for public debate. The lack of transparency can only foster ignorance and bigotry. G

John Handoll is a solicitor with the Dublin firm William Fry.

Recent developments in European law

EMPLOYMENT

Gender discrimination

Case C-281/97 *Andrea Krüger v Kreiskrankenhaus Ebersberg*, judgment of 9 September 1999. Krüger was a nurse employed by the defendant. She worked less than 15 hours a week. She claimed a Christmas bonus equivalent to a month's salary. The defendant refused to pay, claiming that part-time workers were excluded from receiving such bonuses under the collective agreements. The European Court of Justice (ECJ) had to consider whether this exclusion amounted to indirect discrimination against women, contrary to article 141 of the treaty and directive 76/207. The court held that the bonus could be considered as pay and thus fell outside the scope of the directive. The ECJ held that if the exclusion of women in the agreement affected a considerably higher percentage of women than men, it could be considered to be indirect discrimination, offending against article 141.

Case C-249/97 *Gabriele Gruber v Silhouette International Schmied GmbH & Co KG*, judgment of 14 September 1999. Ms Gruber had been employed by Silhouette from 23 June 1986 to 13 December 1995. She had two young children and had taken a period of maternity leave followed by parental leave. She experienced difficulties in finding childcare facilities. Though she had demonstrated a wish to continue with her job, she resigned in November 1995 to take care of her children. She was paid the statutory termination payment. She argued that the Austrian legislation, which limited her termination payment, was in breach of article 141. The Austrian legislation provided for greater compensation to be paid to employees who left their employment for 'important reasons'. She argued that it was indirect discrimination, in that the limited sum was paid to both men and women who left work after the birth of a child, but was likely to prejudicially affect more women. The ECJ looked at the two circumstances. 'Important reasons' were defined as those relating to working conditions which made continued work impossible, so that the worker could not even be expected to work out a notice period. The court held that this was quite different from resigning to look after children. It held, therefore, that the Austrian legislation was not in breach of article 141.

Case C-218/98 *Oumar Dabo Abdoulaye and Ors v Régie nationale des usines Renault SA*, judgment of 16 September 1999. The plaintiffs are male employees of Renault. Female employees of Renault were entitled to a payment of 7,500 francs on taking maternity leave. Their salaries continue to be paid during maternity leave. The ECJ had to consider whether this lump sum payment violated article 141 of the treaty, which established the principle of equal payment for men and women. The court held that such a lump sum payment came within the definition of pay. Renault argued that the payment offset occupational disadvantages suffered by women as a result of pregnancy. A woman on maternity leave could not be proposed for promotion. The period of maternity leave does not count as a period of service in the job. She may not participate in training and it may be difficult for her to adjust on her return to employment. The ECJ accepted this argument and held that article 141 does not preclude payments such as this, which are designed to offset occupational disadvantages arising from workers being away from work.

INSOLVENCY

One of the exclusions from the *Brussels convention on jurisdictional rules and the recognition and enforcement of foreign judgments* was matters relating to insolvency. There have been sporadic efforts in the EU to reach agreement on common rules and there has been a convention proposed by the Council of Europe. In August 1999, Germany and Finland proposed a commission regulation. It proposes the introduction of common EU rules for determining the applicable law for insolvency proceedings. It also covers jurisdictional issues. The European Parliament is currently being consulted about this proposal.

INTELLECTUAL PROPERTY

Trademarks

Case C-375/97 *General Motors Corporation v Yplon SA*, judgment of 14 September 1999. General Motors is the proprietor of the Benelux trademark 'Chevy' for motor vehicles. Yplon is the proprietor of 'Chevy' as a Benelux trademark, but used for detergents and various cleaning products. In 1995, General Motors sought an injunction restraining Yplon from using the trademark 'Chevy', as it diluted its own trademark and damaged its advertising. Yplon defended the action, arguing that GM had not shown that its trademark 'has a reputation' within the meaning of article 5(2) of directive 89/104/EEC on trademarks. This article gives protection to certain trademarks even over dissimilar goods or services. There must be a sufficient level of knowledge of the earlier trademark that the public may make an association with a later trademark even when used for non-similar products or services. The effect of this must be to damage the earlier trademark. The degree of knowledge is reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that mark. In examining whether this condition is fulfilled, the national court must take into account all the relevant facts of the case – in particular, the market share held by the trademark, the intensity, geographical extent and duration of its use and the size of the investment made by the undertaking in promoting it. Territorially, the condition is fulfilled when the mark has a reputation in a member state. The court held that the stronger the earlier mark's distinctive character and reputation, the easier it is to accept that damage has been caused to it.

LITIGATION

Judicial and extra-judicial documents

Most member states of the EU are signatories of the 1965 *Hague convention on the service abroad of judicial and extra-judicial documents in civil and commercial matters.* The purpose of the *Hague convention* is to simplify the serving of judicial documents of one state in another. Such documents include summons, pleadings and other documents used in civil litigation. It sets out procedures to ensure proper service and that proof of service is provided. The convention requires each of the contracting states to appoint a central authority to receive requests for service from other contracting states.

Ireland implemented this convention through two statutory instruments which amended the *Rules of the Superior Courts* (SI No 101 of 1994) and the District Court Rules *(District Court [Service abroad of documents in civil and commercial matters]) Rules, 1994* (SI No 120 of 1994). The master of the High Court is designated as the central authority under the convention. Irish judicial documents must be forwarded to the central authority of the state concerned by a 'judicial officer' in Ireland. For Ireland, a practising solicitor, a county registrar, a District Court clerk or the master of the High Court are deemed to be judicial officers. Service of foreign judicial documents in Ireland can be effected through the master of the High Court, by a solicitor or by post.

In addition to signing the *Hague convention,* many EU member states also agreed a number of bilateral or regional instruments on service of judicial documents. This led to conflicting rules and some confusion. As a result, the EU drew up a draft convention which would supersede the *Hague convention* and other treaties within the EU. In May 1997 the member states signed a convention on the service of judicial and extra-judicial documents. This convention was never ratified. In early 2000, the commission proposed a directive which incorporated the text of this convention. This was referred to the European Parliament, which proposed some amendments – the most significant being its adoption as a regulation. The commission in March 2000 put an amended proposal forward, and this is awaiting the views of the council.

The proposed regulation will apply within the EU, and within it will prevail over any other service convention such as the *Hague convention.* The *Hague convention* will continue to apply to service of judicial documents outside the EU.

The regulation asks states to designate public officers, authorities or other persons as 'transmitting agencies' and 'receiving agencies'. If Ireland was to follow the same approach as with the *Hague convention*, it could appoint solicitors as such agencies. G

More than just desserts: The Law Society recently hosted a dinner for Chief Justice Ronan Keane in Blackhall Place. Pictured *(left to right)* are Junior Vice-President Owen Binchy, Senior Vice-President Ward McEllin, the chief justice, President Anthony Ensor, Director General Ken Murphy and Deputy Director General Mary Keane

Staying up to speed
Assembled for the recent CLE/Employment Law Committee seminar on the *Employment Equality Act* were (*above, left to right*) the Law Society's Geraldine Hynes, Hugh O'Neill, chairman of the Employment Law Committee, Terence McCrann of McCann FitzGerald, Gary Byrne of BCM Hanby Wallace, Nial Crowley, chief executive of the Equality Authority, and CLE's Barbara Joyce

Pictured at the seminar on commercial leases were (*below, left to right*) Colin Keane of McCann FitzGerald, Ernest Farrell of Dockrell Farrell, Ian Scott of Arthur Cox, Niall Coleman from Beauchamps, Niamh O'Sullivan of A&L Goodbody and John Farrell SC

E-dressing the group
John Gaffney and Sandra Delany, both from solicitors William Fry, address a seminar on e-commerce last month. The event, which was held at Blackhall Place, targeted apprentices but also attracted qualified solicitors

Branching out
Gathered in front of their new branch office in Bundoran are (*left to right*) Michael Monahan, Jim Corbett and Michael J Horan of Horan Monahan Solicitors in Sligo

Joining forces in Kilkenny and Carlow
Gathered at a meeting of the Kilkenny and Carlow Solicitors' Association in May were (*front row, left to right*) Elizabeth Walsh, Law Society Director General Ken Murphy, Law Society President Anthony Ensor, Kilkenny Solicitors' Association President Nicholas Harte, Kilkenny Solicitors' Association Secretary Martina Finlay, and William Clarke; (*back row, left to right*) Martin Crotty, Yvonne Clarke, John Harte, Celine Tierney, Joseph Fitzpatrick, Eugene O'Sullivan, Tim Kiely, Kieran Boland, John Quigley, Sarah Breslin, Pat O'Sullivan and Eithne Hegarty

New role for former EU official
Arthur Cox has appointed Joe Brosnan as a consultant on European and government affairs. He recently returned to Ireland from Brussels, where he served as *chef de cabinet* in the EU Employment and Social Affairs Cabinet for more than six years

Liaising in Laois
Pictured at a recent meeting of the County Laois Bar Association were (*front row, left to right*) treasurer Josephine Fitzpatrick, Law Society President Anthony Ensor, association president Philip Meagher, Director General Ken Murphy, and secretary Bernadette Greene; (*back row, left to right*) Declan Breen, John Bolger, Catriona Lanigan, Donal Dunne, Finola Dunne, John Turley, Maria Hanley, John White, Ann Manning, Colm Murphy, Margaret O'Shea-Grewcock, Noel Egan, Eugene O'Connor and Brendan Macnamara

SADSI
Solicitors Apprentices Debating Society of Ireland

Law Society team victorious in the McGowan Cup

Law Society. 68
King's Inns 7

On 12 May, the Law Society trounced the King's Inns at Anglesea Road, notching up ten tries in the process and retaining the McGowan Cup.

While the battle of the backs was an even enough affair, the Law Society's backline ran amok on their hapless opposition. At flyhalf, David Maughan ran the show using the centre pairing of John O'Donoghue and Rob McNicholas to great effect. At the breakdown, flankers Colm Kavanagh and Brian Horkan were quick to recycle the ball for Keith Smith and Rob Laffin, who relished taking on three to four wigs at a time.

The victors
(*Standing, left to right*) Brian Horkan, Peter Tunney, Rob Laffin, Rob McNicholas, Stefan O'Connor, Colm Kavanagh, Keith Smith, John O'Donoghue, Ronnie Neville, David Maughan; (*kneeling*) Jason Teahan, Fergus Doorly, Morris Phelan, and Eoin Wallace

Indeed, most of the team were the beneficiaries of some good running rugby as Eoin Wallace, Jason Teahan, Stefan O'Connor, Smith, McNicholas, and Maughan all touched down. Fergus Doorly, at full-back, had a hat-trick. Maughan added the conversions.

The try *par excellence* came just before full-time. From a restart, lock Ronnie Neville caught the ball in his 22 and proceeded to run around five tacklers before sauntering over the tryline for an impressive score. In fairness to Neville, he deserved it, as he was denied many a scoring opportunity due to Smith's uncharacteristic affection for the ball.

Many thanks to the Old Belvedere RFC for the use of the pitch and to BCM Hanby Wallace for their generous sponsorship, which ensured that the McGowan Cup never ran dry.

Jason Teahan

SADSI Career Development Day

Starting at 11am on 14 July in the Blue Room at Blackhall Place, the Career Development Day is worth a visit by all apprentices interested in expanding their career options. A top-class selection of lawyers from London, Brussels and Ireland will be providing advice on opportunities for newly-qualified solicitors. Opportunities to practice in-house or in taxation, as well as the pros and cons of large and small firms, will be presented and discussed. In true SADSI fashion, the business will finish at 6pm in time for a wine reception followed by a barbecue in Blackhall Place.

Combined professional practice course highlights

The February 2000 combined professional practice course's recent Mystery Tour was a resounding success. The place of mystery, Palmers of Kilternan, provided ample hospitality for revellers aboard the two double-decker buses, and it was not long before everyone had readily adapted to their new-found place of merriment.

The golf outing to Athy Golf Club was also enjoyed by high, low and medium handicappers. The inclement weather conditions failed to dampen any spirits, and the cordial reception extended by both the staff and members in the clubhouse ensured everyone was teed up for the subsequent festivities. So, while there were few birdies on the course, there were plenty of 'swallows' in the clubhouse afterwards.

Odran Bannim

SADSI in Galway

On 24 June 2000, apprentices from all over the country turned out on the shores of the Corrib for the barbecue organised by Conor Fottrell and David Higgins and sponsored by the solicitors of Galway. For many, it was a case of what happened in Galway, stays in Galway ...

SADSI swings south

A few Fridays ago, the regional roadshow rolled into Cork with the sounds of the 80s still ringing in our ears from the swinging sojourn on Shannonside the previous week.

The locals gathered early at the Bailey and it wasn't long before our colleagues from all around the country began to arrive. Praise must go to Pauric EP Heraghty who virtually travelled from Scandinavia to join us. The gathering soon moved the short distance to Redz, where we danced into the small hours. A great night was had by all.

Special thanks to our kind sponsors Ulster Bank for their continued support and to Simon Murphy, president of the Southern Law Association, for his support and conviviality on the night.

Anthony Coomey

INFORMATION EVENING: AUTUMN 2000 COURSE

The Law School and SADSI have organised an information evening for pre-professional apprentices on 10 July and 18 July at 7pm in Blackhall Place. Further details are available from the Law School.

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 14 July 2000)

Regd owner: Carlow Urban Council; Folio: 11579F; Lands: Bestfield or Dunganstown and Barony of Carlow; **Co Carlow**

Regd owner: Eugene McGovern, Altbrean, Swanlinbar, County Cavan; Folio: 22626 & 23520; Lands: Albrean, Commas; Area: 75.038 acres; **Co Cavan**

Regd owner: Stephen Sexton, Carrickacromin, Mountain Lodge, Cootehill, Co Cavan; Folio: 1173; Area: 43.875 acres; **Co Cavan**

Regd owner: Tullig Homes Limited (Limited Liability Company), Cahercalla More, Kilrush Road, Ennis, Co Clare; Folio: 7562F; **Co Clare**

Regd owner: Tom O'Herlihy and Judy O'Connell; Folio: 63158F; Lands: Known as a plot of ground situate in the Townland of Dunmore, the Barony of Ibane and Barrymore, and the County of Cork; **Co Cork**

Regd owner: John Leo Cassidy and Theresa Reynolds, 4 Knather Road, Ballyshannon, Co Donegal; Folio: 6312F; Lands: Townparks; **Co Donegal**

Regd owner: Louis Grant, Ludden, Buncrana, County Donegal; Folio: 12392; Land: Ludden; Area: 2.627 acres; **Co Donegal**

Regd owner: Margaret Murtagh; Folio: DN25935L; Lands: situate at 57 Glencloy Road in the parish and district of Clonturk; **Co Dublin**

Regd owner: Gavan Ryan and Anthony J Carney; Folio: DN85859F; Lands: Known as Unit 2, Ground Floor, Whitefriars, Aungier Street in the parish of St Peter and District of South Central; **Co Dublin**

Regd owner: John Wallace; Folio: DN59597L; Lands: Known as 16 St Begnets Villas in the parish of Dalkey and Borough of Dun Laoghaire; **Co Dublin**

Regd owner: Patrick Downes & Siobhan Crowley; Folio: 37269F; Lands: Townland of Fairview, the Barony of Uppercross situate to the south side of Nangor Road in the town and parish of Clondalkin; **Co Dublin**

Regd owner: Agnes O'Connor, Frances McGrath, Nora Deane, Bernadette Kehoe, Bernardine Scully, Mary O'Brien; Folio: DN496; Lands: situate in the Townland of Smotscourts; **Co Dublin**

Regd owner: Gretta Scarman, 75 The Avenue, Ealing, London W13 8JS, England and formerly of Gannoughs, Cleggan, County Galway; Folio: 3100F; Lands: Townland of (1) Gannoughs (2) Gannoughs (one undivided 31st part), (3) Gannoughs (one undivided 11th part), (4) Gannoughs, (5) Gannoughs (one undivided 31st part), (6) Gannoughs (one undivided 11th part), (7) Gannoughs; the Barony of Ballynahinch; Area: (1) 1.198 hectares, (2) 3.045 hectares, (3) 0.546 hectares, (4) 2.617 hectares, (5) 3.045 hectares, (6) 0.546 hectares, (7) 0.7006 hectares; **Co Galway**

Regd owner: Jeremiah Sheehy (deceased); Folio: 2649F; Lands: Townland of Clash West, the Barony of Trughanacmy; **Co Kerry**

Regd owner: Daniel M Keane (deceased); Folio: 18540; Lands: Townland of Knocknagoshel West, and Barony of Trughanacmy; **Co Kerry**

Regd owner: John J O'Neill (deceased); Folio: 29152; Lands: Townland of Teer and Barony of Corkaguiny; Area: 3.093 acres; **Co Kerry**

Regd owner: Timothy O'Herlihy; Folio: 3567F; Lands: Townland of Tullig, and Barony of Trughanacmy; **Co Kerry**

Regd owner: Mary Fahy, Mary Murphy, Mary O'Flynn, Ellen Hogan, Una May O'Neill; Folio: 1605; Lands: Reviewfields, and Barony of Shillelogher; **Co Kilkenny**

Regd owner: Mary Jo Hughes; Folio: 5451F; Lands: Maryborough, and Barony of Maryborough East; **Co Laois**

Regd owner: Sean Rowney; Folio: 1121F; Lands: Maryborough, and Barony of Maryborough; **Co Laois**

Regd owner: Gerard Synnott and Mary Ryan-Synnott; Folio: 29296F; Lands: Townland of Loughanleagh, and Barony of Pubblebrien; **Co Limerick**

Regd owner: Derek Eason; Folio: 23380F; Lands: Townland of Sluggary and Barony of Pubblebrien; **Co Limerick**

Regd owner: Joseph Dalton; Folio: 22921; Lands: Townland of Rhebogue, and Barony of Clanwilliam; **Co Limerick**

Regd owner: Brendan McGrath; Folio: 47299; Lands: (1) Townland of Cregmore (Browne) (one undivided 7th part), (2) Townland of Lisduff; Barony of Kilmaine; Area: (1) 1.40 acres, (2) 38.619 acres; **Co Mayo**

Regd owner: Michael Plunkett and Mary Plunkett, Forthill, Ballyhaunis, County Mayo; Folio: 5996; Lands: Townland of Mayo, and Barony of Costello; Area: 29a 2r 3p; **Co Mayo**

Regd owner: Charles Rodgers (deceased) and Ellen Rodgers, 26 Sunnybank Road, Potters Lane, Hertfordshire, England and formerly of 2, Aughadrinagh, Castlebar, Co Mayo; Folio: 9447F; Lands: Aghadrinagh, and Barony of Carra; Area: 0.426acres; **Co Mayo**

Regd owner: Matthew Martin, Donaghmore, Ashbourne, Co Meath; Folio: 17837; Lands: Milltown, Area: 6.56 acres; **Co Meath**

Regd owner: Michael Battle, Ash Park, Ballintubber, Castlerea, Co Roscommon (formerly of 8 Oakdowns, Green Park, Clondalkin, Dublin 22); Folio: 30469; Lands: Townland of Killerr, and Barony of Ballymoe; **Co Roscommon**

Regd owner: Kathleen Muldoon, Cloverhill, Roscommon; Folio: 3924F; Lands: Townland of (1) Lissagallan, (2) Cams (one undivided 30th part), (3) Clooneenbaun and Barony of Athlone North; Area: (1) 3.182 hectares, (2) 12.141 hectares, (3) 0.456 hectares; **Co Roscommon**

Regd owner: Patrick John Carway, Ballyconnell, Cloughboley PO, County Sligo; Folio: 2679; Lands: Townland of (1) Ballyconnell (2) Ballineden (3) Ballineden and Barony of Carbury; Area: (1) 5a 1r 10p, (2) 4a 1r 0p, (3) 1a 3r 33p; **Co Sligo**

Regd owner: Michael Ryan; Folio: 19850F and 34029; Lands: Churchquarter and Knocknakill, and Barony of Kilnamanagh Upper; **Co Tipperary**

Regd owner: Anthony Charles Esmonde; Folio: 5188; Lands: Cornalack, and Barony of Ormond Lower; **Co Tipperary**

Regd owner: Patrick Joseph Lynam, Tangara, Marlinstown, Mullingar, Co Westmeath; Folio: 4291; Lands: Marlinstown; **Co Westmeath**

Regd owner: Denis Guidera and Pauline Guidera (both deceased); Folio: 1909F; Lands: Goreyhill, and Barony of Gorey; **Co Wexford**

Regd owner: Alice W Waygood and Harold Fraser Pelley; Folio: 11604; Lands: Townland of Ballincarrig lower and Barony of Ballincor North in the County of Wicklow; **Co Wicklow**

Regd owner: Patrick Joseph Charles McEvoy; Folio: 1153; Lands: Part of the lands of Ballingate Lower and Barony of Shellelagh; **Co Wicklow**

WILLS

Brooks, John (deceased), late of Shrone, Glengarriff, Co Cork. Would any person having knowledge of a will made by the above named deceased who died on 8 April 2000, please contact McCarthy & McCarthy, Solicitors, Main Street, Ballincollig, Co Cork, tel: 021 870550, fax: 021 872341

Brown, Dolores (deceased), late of 81 Glencloy Road, Whitehall, Dublin. Would any person having knowledge of a will made by the above named deceased who died on 13 May 1999, please contact Richard Lee & Company, Solicitors, 123 Upper Churchtown Road, Dublin 14, tel: 01 296 0931, fax: 01 296 0932

Davey, Francis (deceased), late of Ballinacarrow, Ballymote, County Sligo and Rathbaun, Templemore, Ballymote, County Sligo. Would any person having knowledge of a will executed by the above named deceased who died on 3 February 2000, please contact Johnson & Johnson, Solicitors, Ballymote, County Sligo, tel: 071 83304, fax: 071 83526, Ref: D184

Fraher, Edmond Kevin, otherwise Kevin Fraher, late of 105 Upper Leeson Street, Dublin 4 and formerly of 75 Pembrook Court, Dublin 4 and 96 Morehampton Road, Donnybrook, Dublin 4. Would any person having knowledge of a will of the above named deceased who died on 27 January 2000, please contact Neil Twomey & Co, Solicitors, Lismore, Co Waterford, tel: 058 54075, fax: 058 53323

Heaphy, Thomas (deceased), late of 4 Castleview, Ardfinnan, Clonmel, Co Tipperary and formerly of Castlemore Arms, Farnane, Cork and of Rathroe, Killenaule, Co Tipperary. Would any person having knowledge of a will made by the above named deceased who died on 2 January 1995, please contact Albert C O'Dwyer & Co, Solicitors, Barrack Street, Cahir, Co Tipperary.

Hurley, James and or Bridget (both deceased), brother and sister, Boggauns, Newbridge, Co Galway. Would any person having knowledge of any wills made by either of the above named deceased who respectively died on 16 October 1999 and 28 January 1999, please contact Rolleston, Solicitors, Church Street, Portlaoise in the county of Laois, tel: 0502 21329 fax, 0502 20737, DX No 47002, Portlaoise

Kennedy, Thomas and Josephine (both deceased), husband and wife, Ballyara, Tubbercurry, Co Sligo. Would any person having knowledge of any wills made by either of the above named deceased who respectively died on 11 March 1999 and 14 July 1999, please contact Rolleston, Solicitors, Church Street, Portlaoise in the County of Laois, tel: 0502 21329 fax, 0502 20737, DX No 47002, Portlaoise

McArdle, Aine (deceased), late of 28 St Brigid's Road, Clondalkin, Dublin 22. Would any person having knowledge of a will made by the above named deceased who died on 6 March 2000, please contact Ryan & Ryan, Solicitors, 5 St Brigid's Road, Clondalkin, Dublin 22, tel: 01 459 1693 or fax: 01 459 2416

McDonnell, Liam, late of 21 Beaumont Crescent, Beaumont, Dublin 9. Would any person having knowledge of a will executed by the above named deceased who died 15 May 2000, please contact Crean & Co, Solicitors, 10 Rostrevor Terrace, Rathgar, Dublin 6, tel: 01 492 3899 (reference AC)

O'Reilly, Mary (deceased), late of 87 Slieve Rua Drive, Lower Kilmacud Road, Stillorgan, County Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 6 July 1982 at De Montford Nursing Home, Westminister Road, Dublin 18, please contact Vivian C Matthews & Co, Solicitors, 7 Main Street, Dundrum, County Dublin, tel: 01 295 1236, fax: 01 298 0280

Sweeney, Turlough, late of Palmerstown, Co Dublin and Palliskenry, Co Limerick. Would any person having knowledge of a will made by the above named deceased who died on 6 December 1999, please contact Messrs Patricia O'Connor, Solicitor, Ref: PH/joc/tmc, 104 Henry Street, Limerick, tel: 061 311288, fax: 061 311289

Walsh, John (deceased), late of Whitestown, Kilmacthomas, Co Waterford. Would any person having knowledge of the whereabouts of a will dated 2 October 1964 executed by the above named deceased who died on 5 October 1964, please contact M/s T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford tel: 051 874366

MISCELLANEOUS

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 080 1693 68144, fax: 080 1693 60966

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 080 1693 61616, fax: 080 1693 67712

Personal injury claims, employment, family, criminal and property law spe-

cialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford) and Birmingham. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Co at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, England, tel: 0044 181 881 7777, or The McLaren Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000. Alternatively e-mail us on info@davidlevene.co.uk or visit our website at *www.davidlevene.co.uk*.

London solicitors will advise on UK matters and undertake agency work. All areas. Corporate/private clients. Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 171 589 0141, fax: 0044 171 225 3935

Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, Alderman Downward House, 2/3 The Birtles, Civic Centre, Wythenshawe, Manchester M22 5RF, tel: 0044 161 437 0527, fax: 0044 161 437 3225

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

EYE INJURIES AND OPHTHALMOLOGIAL NEGLIGENCE

Mr Louis Clearkin ChM, FRCS, FRCOphth, DO, MAI, MEWI
Consultant Ophthalmic Surgeon
Experienced expert witness in ophthalmological personal injury, medical negligence and civil litigation

Renuntiabo, 8 Rose Mount, Oxton, Wirral, Merseyside, L43 5SW
secretary: +44 (0) 151 6047047
fax: +44 (0) 151 6047152
e-mail: L.Clearkin@Liv.ac.uk

Wanted: pre-1979 Irish law reports, in particular 1960-1978, but other years considered in addition. Reasonable condition required. **Reply to Box No 60**

Ordinary seven-day publican's licence required, anywhere in Ireland. Please reply to Lennon Heather & Company, Solicitors, City Quay House, City Quay, Dublin 2. Reference PMcM

ROYAL ACCOUNTING SERVICES
Specialising in maintaining accounts for small to medium-sized practices and companies.
Service includes any or all of the following
• VAT returns •
• Client invoices & statements •
• Creditors & bank A/Cs •
• PAYE/PRSI returns •
Tel: (Meath) 046 30083

Seven-day clean licence for sale – Galway City. Please contact Ann Houlihan, 01 660 3636

EMPLOYMENT

Experienced solicitor, retired from general practice, willing to undertake conveyancing and probate work from own home, might suit firm unable or unwilling to engage additional staff, modern office facilities. **Reply to Box 55**

Assistant solicitor required for busy general practice in Tipperary South. Two years' PQE preferred. The appointee will deal primarily with conveyancing/probate/commercial work but may be expected to handle litigation matters. Apply in writing with CV and references to **Box No 61**

Experienced solicitor with capital, presently assistant to sole practitioner, would like to hear from solicitor in same position with a view to partnership arrangement, Cork City or County. **Reply to Box No 62**

Solicitor required for busy North Wexford office. Experience in conveyancing and litigation desirable but not essential. Excellent salary and benefits for the right applicant. Send CV to Lombard & Cullen, Solicitors, Market Square, Gorey, Co Wexford

Drogheda – long-established firm is anxious to engage a solicitor for general practice, excellent conditions and salary. Apply with CV and full details to **Box No 63**

Recently-qualified solicitor (mid-50s) seeks PQE in Dublin area. Practical experience in conveyancing, probate, litigation, and family law in a smaller practice preferred. Worthwhile experience more important than remuneration. **Reply to Box No 64**

Locum solicitor with experience required for conveyancing and general practice work in Cork City for the months November to February. Apply with CV to Anne L Horgan & Co, Solicitors, 3 Convent Road, Blackrock, Cork or tel: 021 357729

Bookkeeper required by small central Dublin practice. One day a week. Tel: 01 874 4057

Locum solicitor or recently-qualified solicitor seeking experience required from 1 November 2000 to 1 April 2001 for busy practice in Ennis. Candidates must have experience in conveyancing/probate and litigation. Attractive terms for suitable candidate. Apply in confidence to **Box No 65**

Conveyancer urgently required by legal office of Dublin-based telecommunications company. May suit person wishing to work part-time or partly from home. Please telephone in confidence: 01 701 5930 and quote reference EGH

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978* and in the matter of that part of the lands situate in the townland of Ballitore, Barony of Narragh and Reban East and County of Kildare more particularly comprised in folio 6998F of the Register County Kildare: an application by Michael Dempsey

Take notice that any person having any interest in the unencumbered freehold interest of the following property: a plot of ground in the townland of Ballitore, Barony of Narragh and Reban East and County of Kildare being the property more particularly comprised in folio 6998F of the Register County Kildare.

Take notice that Michael Dempsey intends to submit an application to the county registrar for the county of Kildare for the acquisition of the unencumbered freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of the said notice being received, Michael Dempsey intends to proceed with the application before the county registrar of the county of kildare at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Kildare for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest and that any person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Signed: Brown & McCann, Solicitors, Naas, Co Kildare
21 June 2000

In the matter of the estate of Thomas Confrey (deceased), late of 99 Inchicore Road, Dublin 8

Take notice that the above named Thomas Confrey (deceased), late of 99 Inchicore Road, Dublin 8, died on 29 August 1998 intestate a bachelor without issue. And further take notice that we believe that the said Thomas Confrey may have had a first cousin named Bridget Gorman who lived in the Ballyfermot area of Dublin and a first cousin named Christy Malone, who lived in Dublin.

If any person knows the whereabouts of the said Bridget Gorman or Christy Malone, would they contact the below-named solicitors who have carriage of the administration of the said estate, within six weeks of the date appearing at the foot of this notice.

Signed: Delahunty O'Connor & Co, Solicitors, 179 Crumlin Road, Dublin 12
30 May 2000

J. DAVID O'BRIEN
ATTORNEY AT LAW
20 Vesey St, Suite 700 New York, NY. 10007
Tel: 001212-571-6111
Fax: 001212-571-6166
PERSONAL INJURY ACCIDENT CASES
CONSTRUCTION
RAILROAD
MARITIME
AVIATION
CAR/BUS/TRUCK
MEMBER AMERICAN AND NEW YORK STATE TRIAL LAWYERS ASSOCIATION
Enrolled as Solicitor in Rep. of Ireland, England & Wales